

2003 DRAFTING REQUEST

Bill

Received: 10/16/2003

Received By: mdsida

Wanted: As time permits

Identical to LRB:

For: Gregg Underheim (608) 266-2254

By/Representing: himself

This file may be shown to any legislator: NO

Drafter: mdsida

May Contact:

Addl. Drafters: mlief

Subject: Criminal Law - drugs
Health - miscellaneous
Higher Education - UW System

Extra Copies:

Submit via email: YES

Requester's email: Rep.Underheim@legis.state.wi.us

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Medical use of marijuana

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mdsida 11/21/2003 chanaman 02/09/2004	wjackson 02/09/2004		_____ _____ _____ _____			S&L
/2		wjackson	pgreensl	_____	lemery	lnorthro	S&L

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
		02/09/2004	02/09/2004 _____ pgreensl _____ 02/09/2004 _____		02/09/2004	02/19/2004	Crime

FE Sent For:

<END>

→ At
Intro.

2003 DRAFTING REQUEST**Bill**Received: **10/16/2003**Received By: **mdsida**Wanted: **As time permits**

Identical to LRB:

For: **Gregg Underheim (608) 266-2254**By/Representing: **himself**This file may be shown to any legislator: **NO**Drafter: **mdsida**

May Contact:

Addl. Drafters: **mlief**

Subject: **Criminal Law - drugs**
Health - miscellaneous
Higher Education - UW System

Extra Copies:

Submit via email: **YES**Requester's email: **Rep.Underheim@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Medical use of marijuana

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mdsida 11/21/2003 chanaman 02/09/2004	wjackson 02/09/2004		_____			S&L
/2		wjackson	pgreensl	_____	lemery		S&L

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
		02/09/2004	02/09/2004 _____		02/09/2004		Crime
			pgreensl _____				
			02/09/2004 _____				

FE Sent For:

<END>

11/12/2003 09:28:57 AM

Page 1

2003 DRAFTING REQUEST**Bill**Received: **10/16/2003**Received By: **mdsida**Wanted: **As time permits**

Identical to LRB:

For: **Gregg Underheim (608) 266-2254**By/Representing: **himself**This file may be shown to any legislator: **NO**Drafter: **mdsida**

May Contact:

Addl. Drafters: **mlief**

Subject: **Criminal Law - drugs**
Health - miscellaneous
Higher Education - UW System

Extra Copies:

Submit via email: **YES**Requester's email: **Rep.Underheim@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Medical use of marijuana

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
--------------	----------------	-----------------	--------------	----------------	------------------	-----------------	-----------------

1/?	mdsida	1 WLj 2/8	2/9	2/9			
		1/2 WLj 2/9	PS	PS			
FE Sent For:			2/9	<END>	2/9		
			PS		SWO		

Lief, Madelon

From: Dsida, Michael
Sent: Wednesday, November 12, 2003 9:30 AM
To: Lief, Madelon
Subject: FW: Medical marijuana

Can you draft something for no. 4 for this? (No rush -- I'm not sure what year I'll get to this.)

thanks'

mike

*possession
manifestation
distribution
delivery*

*961. (13)(h), (1m)(h),
(3g)(e)
possession*

-----Original Message-----

From: Sweet, Richard
Sent: Tuesday, November 11, 2003 11:06 AM
To: Dsida, Michael
Cc: Thorson, Randy
Subject: Medical marijuana

*961. 573(1), 961. 574(1),
961. 575(1)*

Mike,

I had a meeting last week with Gregg Underheim and Randy Thorson from his staff. Gregg would like to request a bill draft that relates to medical use of marijuana. The draft would be based on 2001 Assembly Bill 715, with the following changes:

- ✓ 1. The draft would also include a registry of medical users (in addition to the registry of distributors), as is provided in a draft he shared with me--LRB-1523/P2.
of
2. The effective date of the provisions dealing with medical necessity and immunity from arrest and prosecution would be July 1, 2005.
- ✓ 3. A patient no longer qualifies to use the protections under the bill after he or she is convicted of providing marijuana to another person. *Like the above exceptions -- not just patient*
- ✓ 4. UW would be required to conduct a study on medical use of smokeable marijuana using "randomized, controlled trials". The study would have to begin by July 1, 2004. UW would be appropriated \$2 million GPR, minus what they raise in private research funds. *msr*

I hope this gives you enough to go on. If not, do you want to meet with Randy and me?

Thanks for your help.

Dick Sweet
Senior Staff Attorney
Wisconsin Legislative Council
(608)266-2982
richard.sweet@legis.state.wi.us

*Randy - call -- if you use prescribed by doctor --
Bodily cannot provide Class I narcotic
Federal Law 1 Use recommended*

Mon. 12:00

2001 ASSEMBLY BILL 715

LPS: Inserts
are out of order.

January 14, 2002 Introduced by Representatives BOYLE, POCAN, SKINDRUD,
SHERMAN, SCHNEIDER, BERCEAU, GRONEMUS, CARPENTER, MILLER and PLOUFF.
Referred to Committee on Criminal Justice.

Please
proof
amended
stats. w/stats.

repeal

1 AN ACT ~~to renumber~~ 961.01 (1); **to renumber and amend** 59.54 (25), 961.55
2 (8), 968.19 and 968.20 (1); **to amend** 60.23 (21), 66.0107 (1) (bm), 173.12 (1m),
3 289.33 (3) (d), 349.02 (2) (b) 4., 961.555 (2) (a), 961.56 (1), 968.20 (3) (a) and
4 968.20 (3) (b); and **to create** 59.54 (25) (b) 2., 59.54 (25) (b) 3., 961.01 (1g), 961.01
5 (5m), 961.01 (11t), 961.01 (14g), 961.01 (19m), 961.01 (20hm), 961.01 (20t),
6 961.01 (21t), 961.37, 961.436, 961.55 (8) (b), 961.55 (8) (c), 961.555 (2) (e),
7 961.555 (2m), 961.5755, 968.073, 968.12 (5), 968.19 (2), 968.20 (1d) and 968.20
8 (1j) of the statutes; **relating to:** medical use of marijuana, requiring the
9 exercise of rule-making authority, and providing a penalty.

making an appropriation

Analysis by the Legislative Reference Bureau

This bill makes the following changes to current law with respect to marijuana
(also known as tetrahydrocannabinols):

Current prohibitions and penalties

Current law prohibits the manufacture, distribution, and delivery of marijuana
and the possession of marijuana with intent to manufacture, distribute, or deliver
it. Penalties for violating these prohibitions depend on the amount of marijuana
involved. If the crime involves 500 grams or less or ten or fewer marijuana plants,

STET
periodINS
am #

ASSEMBLY BILL 715

the person must be fined not less than \$500 nor more than \$25,000 and may be imprisoned for not more than four years and six months. If the crime involves more than 500 grams but not more than 2,500 grams or more than ten plants but not more than 50 plants, the person must be fined not less than \$1,000 nor more than \$50,000 and must be imprisoned for not less than three months nor more than seven years and six months. If the crime involves more than 2,500 grams or more than 50 plants, the person must be fined not less than \$1,000 nor more than \$100,000 and must be imprisoned for not less than one year nor more than 15 years.

Current law also prohibits a person from possessing or attempting to possess marijuana. A person who violates this prohibition may be fined not more than \$5,000 or imprisoned for not more than two years or both. In addition, a town, village, city, or county may enact an ordinance that prohibits the possession of 25 grams or less of marijuana. A person who violates the ordinance is subject to a forfeiture.

Current law also contains certain prohibitions regarding drug paraphernalia, which includes equipment, products, and materials used to produce, distribute, and use controlled substances, such as marijuana. Under current law, a person who uses drug paraphernalia or who possesses it with the primary intent to use it to produce, distribute, or use a controlled substance unlawfully may be fined not more than \$500 or imprisoned for not more than 30 days or both. A person who delivers drug paraphernalia, possesses it with intent to deliver it, or manufactures it with intent to deliver it, knowing that it will be primarily used to produce, distribute, or use a controlled substance unlawfully, may be fined not more than \$1,000 or imprisoned for not more than 90 days or both.

Medical necessity defense and immunity from arrest and prosecution

This bill establishes a medical necessity defense to marijuana-related prosecutions and property seizure (forfeiture) actions. A person may invoke this defense if he or she is a qualifying patient ^{or the primary caregiver for a qualifying patient} who is someone having or undergoing a debilitating medical condition or treatment. The bill defines a debilitating medical condition to mean any of the following: 1) cancer, glaucoma, AIDS, a positive HIV test, or the treatment of these conditions; 2) a chronic or debilitating disease or medical condition or the treatment of such a disease or condition that causes cachexia (wasting away), severe pain, severe nausea, seizures, or severe and persistent muscle spasms; 3) any other medical condition or any other treatment for a medical condition designated as a debilitating medical condition or treatment in rules promulgated by the department of health and family services (DHFS).

A qualifying patient may invoke this defense if he or she acquires, possesses, cultivates, transports, or uses marijuana to alleviate the symptoms or effects of his or her debilitating medical condition or treatment, but only if no more than a reasonable amount of marijuana is involved. If a person has a statement from his or her physician documenting that the person has or is undergoing a debilitating medical condition or treatment and that the potential benefits to the person of using marijuana outweigh the health risks involved (a "written certification") the person is presumed to have this defense if no more than a reasonable amount of marijuana is involved.

Not The defense applies also to defenses involving drug paraphernalia if the qualifying patient uses the paraphernalia for the medical use of marijuana. A person is presumed to have the defense if the person has from DHFS a valid registry identification card for medical use of marijuana below.

or a primary caregiver or acquires, possesses, cultivates, transports, or facilitates marijuana to alleviate the qualifying patient's medical use of it.

a valid registry identification card

ASSEMBLY BILL 715

The bill also prohibits the arrest or prosecution of a ^{person} ~~qualifying patient~~ who acquires, possesses, cultivates, transports, or uses marijuana to alleviate the symptoms or effects of his or her debilitating medical condition or treatment if the person ~~possesses a written certification~~. This prohibition, however, only applies if no more than a reasonable amount of marijuana is involved. In addition, the bill prohibits the arrest or prosecution of or the imposition of any penalty on a physician who provides a written certification to a person in good faith ~~use Registry for medical~~.

The defense provided under the bill and the prohibition on arrest and prosecution contained in the bill do not apply if the person possesses or attempts to possess marijuana under the following circumstances: 1) the person drives or operates a motor vehicle while under the influence of marijuana; 2) while under the influence of marijuana, the person operates heavy machinery or engages in any other conduct that endangers the health or well-being of another person; 3) the person smokes marijuana on a bus, at the person's workplace, on school premises, in an adult or juvenile correctional facility or jail, at a public park, beach, or recreation center, or at a youth center. In addition, if the putative qualifying patient is under 18 years of age, the defense provided under the bill and the prohibition on arrest and prosecution contained in the bill apply only if the person's parent, guardian, or legal custodian agrees to serve as a primary caregiver for the person. ~~The bill defines a~~

~~primary caregiver as a person who is at least 18 years old and who has agreed to be responsible for managing a qualifying patient's medical use of marijuana.~~

The defense provided under the bill and the prohibition on arrest and prosecution contained in the bill also apply to a primary caregiver for any qualifying patient (regardless of the qualifying patient's age), if the primary caregiver acquires, possesses, cultivates, transfers, or transports marijuana to facilitate the qualifying patient's medical use of it. The defense and the prohibition apply to the primary caregiver only if it is not practicable for the qualifying patient to acquire, possess, cultivate, or transport marijuana independently or if the qualifying patient is under 18. The defense and the prohibition also apply to offenses involving drug paraphernalia if the qualifying patient uses the drug paraphernalia for the medical use of marijuana.

Registered marijuana distribution organizations

The bill authorizes certain nonprofit corporations to deliver or distribute tetrahydrocannabinols or drug paraphernalia or possess or manufacture them with the intent to deliver or distribute them to facilitate the medical use of marijuana. Such an organization may only deliver or distribute marijuana or drug paraphernalia to a qualifying patient or a qualifying patient's primary caregiver to facilitate the qualifying patient's medical use of marijuana ~~and only after verifying the validity of the qualifying patient's written certification~~. A nonprofit corporation is eligible to engage in these activities if it is organized for the purpose of manufacturing, delivering, distributing, or possessing marijuana, drug paraphernalia, and educational materials to facilitate the medical use of marijuana. It may not employ or utilize the services of any person who has been convicted of a drug offense or obtain marijuana from outside the state in violation of federal law. The organization must register annually with DHFS.

as a primary caregiver

or acquires, possesses, cultivates, or transports marijuana to facilitate the qualifying patient's medical use of it

has a valid registry identification card from DHFS

This prohibition applies also to offenses involving drug paraphernalia if the qualifying patient uses

B/I users of marijuana below

or 4) the person has been convicted of distributing or delivering or possessing with the intent to distribute and deliver marijuana to another person

INS A

ASSEMBLY BILL 715***Effect on federal law***

This bill changes only state law regarding marijuana. Federal law generally prohibits persons from manufacturing, delivering, or possessing marijuana and applies to both intrastate and interstate violations.

For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 59.54 (25)[✓] of the statutes is renumbered 59.54 (25) (a) and amended
2 to read:

3 59.54 (25) (a) The board may enact and enforce an ordinance to prohibit the
4 possession of 25 grams or less of marijuana, as defined in s. 961.01 (14), subject to
5 par. (b) and the exceptions in s. 961.41 (3g) (intro.), and provide a forfeiture for a
6 violation of the ordinance; except that any person who is charged with possession of
7 more than 25 grams of marijuana, or who is charged with possession of any amount
8 of marijuana following a conviction for possession of marijuana, in this state shall
9 not be prosecuted under this subsection. Any ordinance enacted under this
10 paragraph shall provide a person who is prosecuted under it with the defenses that
11 the person has under s. 961.436 to prosecutions under s. 961.41 (1) (h), (1m) (h), or
12 (3g) (e).

13 (b) 1. Any ordinance enacted under this subsection par. (a) does not apply in
14 any municipality that has enacted an ordinance prohibiting the possession of
15 marijuana.

16 **SECTION 2.** 59.54 (25) (b) 2. of the statutes is created to read:

INS ✓
MJL

INS ✓
4-1
MJL

ASSEMBLY BILL 715

1 59.54 (25) (b) 2. A person may not be prosecuted under an ordinance enacted
2 under par. (a) if, under s. 968.073 (2), the person would not be subject to prosecution
3 under s. 961.41 (3g) (e).

4 **SECTION 3.** 59.54 (25) (b) 3. of the statutes is created to read:

5 59.54 (25) (b) 3. No person who is charged with possession of more than 25
6 grams of marijuana, or who is charged with possession of any amount of marijuana
7 following a conviction for possession of marijuana, in this state may be prosecuted
8 under an ordinance enacted under par. (a).

9 **SECTION 4.** 60.23 (21) of the statutes is amended to read:

10 60.23 (21) DRUG PARAPHERNALIA. Adopt an ordinance to prohibit conduct that
11 is the same as that prohibited by s. 961.573 (2), 961.574 (2) or 961.575 (2). Any
12 ordinance enacted under this subsection shall provide a person prosecuted under it
13 with the defenses that the person has under s. 961.5755 to prosecutions under s.
14 961.573 (1), 961.574 (1), or 961.575 (1). A person may not be prosecuted under an
15 ordinance enacted under this subsection if, under s. 968.073 (3), the person would
16 not be subject to prosecution under s. 961.573 (2) or 961.574 (2).

17 **SECTION 5.** 66.0107 (1) (bm) of the statutes is amended to read:

18 66.0107 (1) (bm) Enact and enforce an ordinance to prohibit the possession of
19 25 grams or less of marijuana, as defined in s. 961.01 (14), subject to this paragraph
20 and the exceptions in s. 961.41 (3g) (intro.), and provide a forfeiture for a violation
21 of the ordinance; except that any ^{STET 001/02} Any ordinance enacted under this paragraph shall
22 provide a person prosecuted under it with the defenses that the person has under s.
23 961.436 to prosecutions under s. 961.41 (1) (h), (1m) (h), or (3g) (e). A person may not
24 be prosecuted under an ordinance enacted under this paragraph if, under s. 968.073
25 (2), the person would not be subject to prosecution under s. 961.41 (3g) (e). No person

ASSEMBLY BILL 715

SECTION 5

1 who is charged with possession of more than 25 grams of marijuana, or who is
2 charged with possession of any amount of marijuana following a conviction for
3 possession of marijuana, in this state ~~shall not~~ may be prosecuted under this
4 paragraph.

5 **SECTION 6.** 173.12 (1m) of the statutes is amended to read:

6 173.12 (1m) If an animal has been seized because it is alleged that the animal
7 has been used in or constitutes evidence of any crime specified in s. 951.08, the
8 animal may not be returned to the owner by an officer under s. 968.20 (2). In any
9 hearing under s. 968.20 ~~(1)~~ (1f), the court shall determine if the animal is needed as
10 evidence or there is reason to believe that the animal has participated in or been
11 trained for fighting. If the court makes such a finding, the animal shall be retained
12 in custody.

13 **SECTION 7.** 289.33 (3) (d) of the statutes is amended to read:

14 289.33 (3) (d) "Local approval" includes any requirement for a permit, license,
15 authorization, approval, variance or exception or any restriction, condition of
16 approval or other restriction, regulation, requirement or prohibition imposed by a
17 charter ordinance, general ordinance, zoning ordinance, resolution or regulation by
18 a town, city, village, county or special purpose district, including without limitation
19 because of enumeration any ordinance, resolution or regulation adopted under s.
20 59.03 (2), 59.11 (5), 59.42 (1), ~~59.48~~, 59.51 (1) and (2), 59.52 (2), (5), (6), (7), (8), (9),
21 (11), (12), (13), (15), (16), (17), ~~(18), (19)~~, (20), (21), (22), (23), (24), (25), (26) and (27),
22 59.53 (1), (2), (3), (4), (5), (7), (8), (9), (11), (12), (13), (14), ~~(15)~~, (19), (20) and (23),
23 59.535 (2), (3) and (4), 59.54 (1), (2), (3), (4), ~~(4m)~~, (5), (6), (7), (8), (10), (11), (12), (16),
24 (17), (18), (19), (20), (21), (22), (23), (24), (25) (a) and (26), 59.55 (3), (4), (5) and (6),
25 59.56 (1), (2), ~~(4)~~, (5), (6), (7), (9), (10), (11), (12), (12m), ~~(13)~~ and (16), 59.57 (1), 59.58

ASSEMBLY BILL 715

1 (1) and (5), 59.62, 59.69, 59.692, 59.693, 59.696, 59.697, 59.698, 59.70 (1), (2), (3), (5),
2 (7), (8), (9), (10), (11), (21), (22) and (23), 59.79 (1), (2), (3), (4), (5), (6), (7), (8), (10) and
3 (11), 59.792 (2) and (3), 59.80, 59.82, 60.10, 60.22, 60.23, 60.54, 60.77, 61.34, 61.35,
4 61.351, 61.354, 62.11, 62.23, 62.231, 62.234, 66.0101, 66.0415, 87.30, 91.73, 196.58,
5 200.11 (8), 236.45, 281.43 or 349.16 or subch. VIII of ch. 60.

6 **SECTION 8.** 349.02 (2) (b) 4. of the statutes is amended to read:

7 349.02 (2) (b) 4. Local ordinances enacted under s. 59.54 (25) (a), 60.23 (21) or
8 66.0107 (1) (bm).

9 **SECTION 9.** 961.01 (1) of the statutes is renumbered 961.01 (1m).

10 **SECTION 10.** 961.01 (1g) of the statutes is created to read:

11 961.01 (1g) "Adequate supply" means an amount of tetrahydrocannabinols
12 that is not more than is reasonably necessary to ensure the uninterrupted
13 availability of tetrahydrocannabinols for their medical use by a treatment team.

14 **SECTION 11.** 961.01 (5m) of the statutes is created to read:

15 961.01 (5m) "Debilitating medical condition or treatment" means any of the
16 following:

17 (a) Cancer, glaucoma, acquired immunodeficiency syndrome, a positive test for
18 the presence of HIV, antigen or nonantigenic products of HIV, or an antibody to HIV,
19 or the treatment of these conditions.

20 (b) A chronic or debilitating disease or medical condition or the treatment of
21 such a disease or condition that causes cachexia, severe pain, severe nausea,
22 seizures, or severe and persistent muscle spasms.

23 (c) Any other medical condition or any other treatment for a medical condition
24 designated as a debilitating medical condition or treatment in rules promulgated by
25 the department of health and family services under s. 961.436 (5).

ASSEMBLY BILL 715**SECTION 12**

1 **SECTION 12.** 961.01 (11t) of the statutes is created to read:

2 961.01 (11t) “HIV” means any strain of human immunodeficiency virus, which
3 causes acquired immunodeficiency syndrome.

4 **SECTION 13.** 961.01 (14g) of the statutes is created to read:

5 961.01 (14g) “Medical use of tetrahydrocannabinols” means any of the
6 following:

7 (a) The use of tetrahydrocannabinols by a qualifying patient to alleviate the
8 symptoms or effects of the patient’s debilitating medical condition or treatment.

9 (b) The acquisition, possession, cultivation, or transportation of
10 tetrahydrocannabinols by a qualifying patient if done to facilitate his or her use of
11 the tetrahydrocannabinols under par. (a).

12 (c) The acquisition, possession, cultivation, or transportation of
13 tetrahydrocannabinols by a primary caregiver of a qualifying patient, the transfer
14 of tetrahydrocannabinols between a qualifying patient and his or her primary
15 caregivers, or the transfer of tetrahydrocannabinols between persons who are
16 primary caregivers for the same qualifying patient if all of the following apply:

17 1. The acquisition, possession, cultivation, transportation, or transfer of the
18 tetrahydrocannabinols is done to facilitate the qualifying patient’s use of
19 tetrahydrocannabinols under par. (a) or (b).

20 2. It is not practicable for the qualifying patient to acquire, possess, cultivate,
21 or transport the tetrahydrocannabinols independently or the qualifying patient is
22 under 18 years of age.

23 **SECTION 14.** 961.01 (19m) of the statutes is created to read:

ASSEMBLY BILL 715

1 961.01 (19m) "Primary caregiver" means a person who is at least 18 years of
2 age and who has agreed to help a qualifying patient in his or her medical use of
3 tetrahydrocannabinols.

4 **SECTION 15.** 961.01 (20hm) of the statutes is created to read:

5 961.01 (20hm) "Qualifying patient" means a person who has been diagnosed
6 by a physician as having or undergoing a debilitating medical condition or treatment
7 but does not include a person under the age of 18 years unless all of the following
8 apply:

9 (a) The person's physician has explained the potential risks and benefits of the
10 medical use of tetrahydrocannabinols to the person and to a parent, guardian, or
11 person having legal custody of the person.

12 (b) The parent, guardian, or person having legal custody provides the physician
13 a written statement consenting to do all of the following:

- 14 1. Allow the person's medical use of tetrahydrocannabinols.
15 2. Serve as a primary caregiver for the person.
16 3. Manage the person's medical use of tetrahydrocannabinols.

17 **SECTION 16.** 961.01 (20t) of the statutes is created to read:

18 961.01 (20t) "Treatment team" means a qualifying patient and his or her
19 primary caregivers.

20 **SECTION 17.** 961.01 (21t) of the statutes is created to read:

21 961.01 (21t) "Written certification" means a statement made by a person's
22 physician if all of the following apply:

23 (a) The statement indicates that, in the physician's professional opinion, the
24 person has or is undergoing a debilitating medical condition or treatment and the

INS
9-17-02

ASSEMBLY BILL 715

SECTION 17

1 potential benefits of the person's use of tetrahydrocannabinols under sub. (14g) (a)
2 would likely outweigh the health risks for the person.

3 (b) The statement indicates that the opinion described in par. (a) was formed
4 after a full assessment, made in the course of a bona fide physician-patient
5 relationship, of the person's medical history and current medical condition.

6 (c) The statement is signed by the physician or is contained in the person's
7 medical records.

8 **SECTION 18.** 961.37 of the statutes is created to read:

9 **961.37 Distribution of medical marijuana.** (1) In this section:

10 (a) "Department" means the department of health and family services.

11 (b) "Drug paraphernalia" has the meaning given in s. 961.571 (1).

12 (c) "Registered organization" means a nonprofit corporation that is registered
13 under sub. (4) and that is organized for the purpose of manufacturing, delivering,
14 distributing, or possessing tetrahydrocannabinols, drug paraphernalia, and
15 educational materials to facilitate the medical use of tetrahydrocannabinols.

16 (2) (a) ~~Subject to par. (1),~~ a registered organization may deliver or distribute
17 tetrahydrocannabinols or drug paraphernalia ~~to any of the following~~ to facilitate the
18 medical use of tetrahydrocannabinols by a qualifying patient's treatment team.

19 1. The qualifying patient, if he or she provides the registered organization a
20 copy of his or her ~~written certification~~ registry identification card

21 2. A primary caregiver for the qualifying patient, if he or she provides the
22 registered organization a copy of ~~the qualifying patient's written certification~~ his or her

23 (b) ~~Subject to par. (1),~~ a registered organization may possess or manufacture
24 tetrahydrocannabinols or drug paraphernalia with the intent to deliver or distribute
25 them under par. (a).

(No ff)

to a person who has provided
the registered organization with a copy
of a valid registry identification card

ASSEMBLY BILL 715

1 (c) A registered organization may not deliver, distribute, possess, or
2 manufacture tetrahydrocannabinols under par. (a) or (b) without first doing all of the
3 following:

4 1. Contacting the office of the qualifying patient's physician to verify the
5 validity of the qualifying patient's written certification.

6 2. Contacting the medical examining board to verify that the physician is
7 licensed to practice medicine and surgery under ch. 448.

8 (d) A federal, state, or local law enforcement agency may deliver or distribute
9 tetrahydrocannabinols or drug paraphernalia to a registered organization.

10 (3) A registered organization may not employ or utilize the services of any
11 person who has been convicted of a crime under this chapter nor may it,
12 notwithstanding sub. (2), obtain tetrahydrocannabinols from outside the state in
13 violation of federal law.

14 (4) Before engaging in any conduct authorized under sub. (2), a registered
15 organization shall file with the department a registration statement in a form to be
16 determined by the department. Thereafter, the organization shall annually file a
17 registration statement with the department in accordance with department rules.

18 (5) The department shall promulgate rules to implement this section,
19 including rules doing all of the following:

20 (a) Setting specifications for the membership of the staff and the boards of
21 directors of registered organizations.

22 (b) Managing transfers to registered organizations of tetrahydrocannabinols
23 or drug paraphernalia seized by law enforcement agencies.

24 (c) Establishing record-keeping and reporting requirements for registered
25 organizations.

ASSEMBLY BILL 715

SECTION 18

(d) Establishing registration requirements under sub. (4).

(e) Establishing procedures for the oversight of registered organizations and for suspending or terminating the registration of registered organizations.

SECTION 19. 961.436 of the statutes is created to read:

961.436 Medical use defense in cases involving tetrahydrocannabinols. (1) A member of a qualifying patient's treatment team has a defense to prosecution under s. 961.41 (1) (h) or (1m) (h) for manufacturing, or possessing with intent to manufacture, tetrahydrocannabinols if all of the following apply:

(a) The manufacture or possession is a medical use of tetrahydrocannabinols by the treatment team.

(b) The amount of tetrahydrocannabinols does not exceed an adequate supply.

(2) A member of a qualifying patient's treatment team has a defense to prosecution under s. 961.41 (1) (h) or (1m) (h) for distributing or delivering, or possessing with intent to distribute or deliver, tetrahydrocannabinols to another member of the treatment team if all of the following apply:

(a) The distribution, delivery, or possession is a medical use of tetrahydrocannabinols by the treatment team.

(b) The amount of tetrahydrocannabinols does not exceed an adequate supply.

(3) (a) Except as provided in par. (b), a member of a qualifying patient's treatment team has a defense to a prosecution under s. 961.41 (3g) (e) if all of the following apply:

1. The possession or attempted possession is a medical use of tetrahydrocannabinols by the treatment team.

2. The amount of tetrahydrocannabinols does not exceed an adequate supply.

ASSEMBLY BILL 715

(b) A person may not assert the defense described in par. (a) if, while he or she possesses or attempts to possess tetrahydrocannabinols, any of the following applies:

1. The person drives or operates a motor vehicle while under the influence of tetrahydrocannabinols in violation of s. 346.64 (1) or a local ordinance in conformity with s. 346.64 (1).

2. While under the influence of tetrahydrocannabinols, the person operates heavy machinery or engages in any other conduct that endangers the health or well-being of another person.

3. The person smokes marijuana in, on, or at any of the following places:

a. A school bus or a public transit vehicle.

b. The person's place of employment.

c. Public or private school premises.

d. A juvenile correctional facility.

e. A jail or adult correctional facility.

f. A public park, beach, or recreation center.

g. A youth center.

(4) For the purposes of a defense raised under sub. (1), (2), or (3) (a), a ² ~~written~~ ^{valid registry identification card} ~~certification~~ ^{person identified on the card as} is presumptive evidence that the ~~subject of the written certification is~~ ^{is a qualifying patient} and that if the person uses tetrahydrocannabinols he or she does so to alleviate the symptoms or effects of his or her debilitating medical condition or treatment.

(5) (a) In this subsection, "department" means the department of health and family services.

(b) Notwithstanding s. 227.12 (1), any person may petition the department to promulgate a rule to designate a medical condition or treatment as a debilitating

¶ 40 The person is convicted under 509.041 (1)(h) or (1m)(h) 0

ASSEMBLY BILL 715

SECTION 19

1 medical condition or treatment. The department shall promulgate rules providing
2 for public notice of and a public hearing regarding any such petition, with the public
3 hearing providing persons an opportunity to comment upon the petition. After the
4 hearing, but no later than 180 days after the submission of the petition, the
5 department shall approve or deny the petition. The department's decision to approve
6 or deny a petition is subject to judicial review under s. 227.52.

7 **SECTION 20.** 961.55 (8) of the statutes is renumbered 961.55 (8) (intro.) and
8 amended to read:

9 961.55 (8) (intro.) The failure, upon demand by any officer or employee
10 designated in s. 961.51 (1) or (2), of the person in occupancy or in control of land or
11 premises upon which the species of plants are growing or being stored, to produce ~~an~~
12 any of the following constitutes authority for the seizure and forfeiture of the plants:

13 (a) An appropriate federal registration, or proof that the person is the holder
14 thereof, ~~constitutes authority for the seizure and forfeiture of the plants.~~

15 **SECTION 21.** 961.55 (8) (b) of the statutes is created to read:

16 961.55 (8) (b) The person's ~~written certification~~ ^{or a primary caregiver's} ~~if the person is a qualifying~~
17 ~~patient.~~ ^{valid registry identification card}

18 **SECTION 22.** 961.55 (8) (c) of the statutes is created to read:

19 961.55 (8) (c) A ~~written certification~~ ^{valid registry identification card} for a qualifying patient for whom the
20 person is a primary caregiver.

21 **SECTION 23.** 961.555 (2) (a) of the statutes is amended to read:

22 961.555 (2) (a) The Except as provided in par. (e), the district attorney of the
23 county within which the property was seized shall commence the forfeiture action
24 within 30 days after the seizure of the property, ~~except that the defendant may~~
25 ~~request that the forfeiture proceedings be adjourned until after adjudication of any~~

ASSEMBLY BILL 715

1 ~~charge concerning a crime which was the basis for the seizure of the property. The~~
2 ~~request shall be granted.~~ The forfeiture action shall be commenced by filing a
3 summons, complaint and affidavit of the person who seized the property with the
4 clerk of circuit court, provided service of authenticated copies of those papers is made
5 in accordance with ch. 801 within 90 days after filing upon the person from whom
6 the property was seized and upon any person known to have a bona fide perfected
7 security interest in the property.

8 **SECTION 24.** 961.555 (2) (e) of the statutes is created to read:

9 961.555 (2) (e) The court shall adjourn forfeiture proceedings until after
10 adjudication of any charge concerning a crime that was the basis for the seizure of
11 the property if any of the following applies:

12 1. The defendant requests an adjournment.

13 2. The defendant invokes a defense to the crime under s. 961.436 or 961.5755.

14 **SECTION 25.** 961.555 (2m) of the statutes is created to read:

15 961.555 (2m) MEDICAL NECESSITY DEFENSE. (a) In an action to forfeit property
16 seized under s. 961.55, the person who was in possession of the property when it was
17 seized has a defense to the forfeiture of the property if any of the following applies:

18 1. The person was prosecuted under s. 961.41 (1) (h), (1m) (h), or (3g) (e),
19 961.573 (1), 961.574 (1), or 961.575 (1) in connection with the seized property but had
20 a valid defense under s. 961.436 (1), (2), or (3) (a) or 961.5755 (1) (a) or (2).

21 2. The person was not prosecuted under s. 961.41 (1) (h), (1m) (h), or (3g) (e),
22 961.573 (1), 961.574 (1), or 961.575 (1) in connection with the seized property, but,
23 if the person had been, he or she would have had a valid defense under s. 961.436 (1),
24 (2), or (3) (a) or 961.5755 (1) (a) or (2).

ASSEMBLY BILL 715

(b) The owner of property seized under s. 961.55 who is raising a defense under par. (a) shall do so in the answer to the complaint that he or she serves under sub.

(2) (b). When a property owner raises such a defense in his or her answer, the state must, as part of the burden of proof specified in sub. (3), prove that the facts constituting the defense do not exist.

SECTION 26. 961.56 (1) of the statutes is amended to read:

961.56 (1) It Except as provided in s. 961.555 (2m) (b) and except for any presumption arising under s. 961.436 (4) or 961.5755 (3), it is not necessary for the state to negate any exemption or exception in this chapter in any complaint, information, indictment or other pleading or in any trial, hearing or other proceeding under this chapter. ~~The, and the~~ burden of proof of any exemption or exception is upon the person claiming it.

SECTION 27. 961.5755 of the statutes is created to read:

961.5755 Medical use of marijuana defense in drug paraphernalia cases. (1) (a) Except as provided in par. (b), a member of a treatment team has a defense to prosecution under s. 961.573 (1) if he or she uses, or possesses with the primary intent to use, drug paraphernalia for the medical use of tetrahydrocannabinols by the treatment team.

(b) This subsection does not apply if while the person uses, or possesses with the primary intent to use, drug paraphernalia s. 961.436 (3) (b) 1., 2., ~~or~~ 3. applies. *5 or 6*

(2) A member of a treatment team has a defense to prosecution under s. 961.574 (1) or 961.575 (1) if he or she delivers, possesses with intent to deliver, or manufactures with intent to deliver to another member of his or her treatment team drug paraphernalia, knowing that it will be primarily used for the medical use of tetrahydrocannabinols by the treatment team.

ASSEMBLY BILL 715

(3) For the purposes of a defense raised under sub. (1) (a) or (2), a ~~written~~ ^{valid registry identification card} ~~certification~~ ^{person identified on the card as} is presumptive evidence that the ~~subject of the written certification is~~ ^{is a qualifying patient} a qualifying patient and that, if the person uses tetrahydrocannabinols, he or she does so to alleviate the symptoms or effects of his or her debilitating medical condition or treatment.

SECTION 28. 968.073 of the statutes is created to read:

968.073 Medical use of marijuana; arrest and prosecution. (1)

DEFINITIONS. In this section:

(a) "Adequate supply" has the meaning given in s. 961.01 (1g).

(b) "Medical use of tetrahydrocannabinols" has the meaning given in s. 961.01 (14g).

(c) "Primary caregiver" has the meaning given in s. 961.01 (19m).

(d) "Qualifying patient" has the meaning given in s. 961.01 (20hm).

(e) "Treatment team" has the meaning given in s. 961.01 (20t).

(f) "Written certification" has the meaning given in s. 961.01 (21t).

(2) LIMITATIONS ON ARRESTS AND PROSECUTION; MEDICAL USE OF MARIJUANA. Unless s. 961.436 (3) (b) 1., 2., ^{or 3.} applies, a member of a qualifying patient's treatment team may not be arrested or prosecuted for a violation of s. 961.41 (1) (h), (1m) (h), or (3g) (e) if all of the following apply:

(a) The person manufactures, distributes, delivers, or possesses tetrahydrocannabinols for their medical use by the treatment team.

(b) The person possesses a copy of the qualifying patient's ^{or primary caregiver's valid registry identification card} ~~written certification~~.

(c) The quantity of tetrahydrocannabinols does not exceed an adequate supply.

(3) LIMITATIONS ON ARRESTS AND PROSECUTION; DRUG PARAPHERNALIA FOR MEDICAL USE OF MARIJUANA. (a) Unless s. 961.436 (3) (b) 1., 2., ^{or 3.} applies, a member of a

(c) Registry identification card has the meaning given in s. 146.45 (1) (g)

(9)

5 or 40

ASSEMBLY BILL 715

SECTION 28

1 treatment team may not be arrested or prosecuted for a violation of s. 961.573 (1) if
2 all of the following apply:

3 1. The person uses, or possesses with the primary intent to use, drug
4 paraphernalia for the medical use of tetrahydrocannabinols by the treatment team.

5 2. The person possesses a copy of the qualifying patient's ~~written certification~~

6 3. The person does not possess more than an adequate supply of

7 tetrahydrocannabinols.

8 (b) Unless s. 961.436 (3) (b) 1., 2., ^{or 3.} applies, a member of a treatment team
9 may not be arrested or prosecuted for a violation of s. 961.574 (1) or 961.575 (1) if all
10 of the following apply:

11 1. The person delivers, possesses with intent to deliver, or manufactures with
12 intent to deliver to another member of his or her treatment team drug paraphernalia,
13 knowing that it will be primarily used for the medical use of tetrahydrocannabinols
14 by the treatment team.

15 2. The person possesses a copy of the qualifying patient's ~~written certification~~

16 3. The person does not possess more than an adequate supply of
17 tetrahydrocannabinols.

18 (4) LIMITATIONS ON ARRESTS, PROSECUTION, AND OTHER SANCTIONS; PHYSICIANS. A
19 physician may not be arrested and a physician, hospital, or clinic may not be subject
20 to prosecution, denied any right or privilege, or penalized in any manner for making
21 or providing a written certification in good faith.

22 (5) PENALTY FOR FALSE STATEMENTS. Whoever intentionally provides false
23 information to a law enforcement officer in an attempt to avoid arrest or prosecution
24 under this section for a violation of s. 961.41 (1) (h), (1m) (h), or (3g) (e), 961.573 (1),
25 961.574 (1), or 961.575 (1) may be fined not more than \$500.

ASSEMBLY BILL 715

1 ~~SECTION 29.~~ 968.12 (5) of the statutes is created to read:

2 968.12 (5) ~~MEDICAL USE OF MARIJUANA.~~ A person's possession of a written
3 certification shall not, by itself, constitute probable cause under sub. (1) or otherwise
4 subject the person or property of the person to inspection by any governmental
5 agency.

6 SECTION 30. 968.19 of the statutes is renumbered 968.19 (1) and amended to
7 read:

8 968.19 (1) Property ~~Except as provided in sub. (2), property~~ seized under a
9 search warrant or validly seized without a warrant shall be safely kept by the officer,
10 who may leave it in the custody of the sheriff and take a receipt therefor, so long as
11 necessary for the purpose of being produced as evidence on any trial.

12 SECTION 31. 968.19 (2) of the statutes is created to read:

13 968.19 (2) A law enforcement agency that has seized a live marijuana plant is
14 not responsible for the plant's care and maintenance.

15 SECTION 32. 968.20 (1) of the statutes, ~~as affected by 2001 Wisconsin Act 19,~~
16 is renumbered 968.20 (1f), and 968.20 (1f) (intro.), as renumbered, is amended to
17 read:

18 968.20 (1f) (intro.) Any ~~Except as provided in sub. (1j), any~~ person claiming the
19 right to possession of property seized pursuant to a search warrant or seized without
20 a search warrant may apply for its return to the circuit court for the county in which
21 the property was seized or where the search warrant was returned. The court shall
22 order such notice as it deems adequate to be given the district attorney and all
23 persons who have or may have an interest in the property and shall hold a hearing
24 to hear all claims to its true ownership. If the right to possession is proved to the

INS
19-6

ASSEMBLY BILL 715**SECTION 32**

1 court's satisfaction, it shall order the property, ~~other than contraband or property~~
2 ~~covered under sub. (1m) or (1r) or s. 173.12, 173.21 (4), or 968.205~~, returned if:

3 **SECTION 33.** 968.20 (1d) of the statutes is created to read:

4 968.20 (1d) In this section:

5 (a) "Drug paraphernalia" has the meaning given in s. 961.571 (1) (a).

6 (b) "Tetrahydrocannabinols" means a substance included in s. 961.14 (4) (t).

7 **SECTION 34.** 968.20 (1j) of the statutes is created to read:

8 968.20 (1j) (a) Except as provided in par. (b), sub. (1f) does not apply to
9 contraband or property covered under sub. (1m) or (1r) or s. 173.12, 173.21 (4), or
10 968.205.

11 (b) Under sub. (1f), the court may return drug paraphernalia or
12 tetrahydrocannabinols that have been seized to the person from whom they were
13 seized if any of the following applies:

14 1. The person was prosecuted under s. 961.41 (1) (h), (1m) (h), or (3g) (e),
15 961.573 (1), 961.574 (1), or 961.575 (1) in connection with the seized property but had
16 a valid defense under s. 961.436 (1), (2), or (3) (a) or 961.5755 (1) (a) or (2).

17 2. The person was not prosecuted under s. 961.41 (1) (h), (1m) (h), or (3g) (e),
18 961.573 (1), 961.574 (1), or 961.575 (1) in connection with the seized property, but,
19 if the person had been, he or she would have had a valid defense under s. 961.436 (1),
20 (2), or (3) (a) or 961.5755 (1) (a) or (2).

21 **SECTION 35.** 968.20 (3) (a) of the statutes is amended to read:

22 968.20 (3) (a) First class cities shall dispose of dangerous weapons or
23 ammunition seized 12 months after taking possession of them if the owner,
24 authorized under sub. (1m), has not requested their return and if the dangerous
25 weapon or ammunition is not required for evidence or use in further investigation

ASSEMBLY BILL 715

1 and has not been disposed of pursuant to a court order at the completion of a criminal
2 action or proceeding. Disposition procedures shall be established by ordinance or
3 resolution and may include provisions authorizing an attempt to return to the
4 rightful owner any dangerous weapons or ammunition which appear to be stolen or
5 are reported stolen. If enacted, any such provision shall include a presumption that
6 if the dangerous weapons or ammunition appear to be or are reported stolen an
7 attempt will be made to return the dangerous weapons or ammunition to the
8 authorized rightful owner. If the return of a seized dangerous weapon other than a
9 firearm is not requested by its rightful owner under sub. ~~(1)~~ (1f) and is not returned
10 by the officer under sub. (2), the city shall safely dispose of the dangerous weapon or,
11 if the dangerous weapon is a motor vehicle, as defined in s. 340.01 (35), sell the motor
12 vehicle following the procedure under s. 973.075 (4) or authorize a law enforcement
13 agency to retain and use the motor vehicle. If the return of a seized firearm or
14 ammunition is not requested by its authorized rightful owner under sub. ~~(1)~~ (1f) and
15 is not returned by the officer under sub. (2), the seized firearm or ammunition shall
16 be shipped to and become property of the state crime laboratories. A person
17 designated by the department of justice may destroy any material for which the
18 laboratory has no use or arrange for the exchange of material with other public
19 agencies. In lieu of destruction, shoulder weapons for which the laboratories have
20 no use shall be turned over to the department of natural resources for sale and
21 distribution of proceeds under s. 29.934.

22 **SECTION 36.** 968.20 (3) (b) of the statutes is amended to read:

23 968.20 (3) (b) Except as provided in par. (a) or sub. (1m) or (4), a city, village,
24 town or county or other custodian of a seized dangerous weapon or ammunition, if
25 the dangerous weapon or ammunition is not required for evidence or use in further

ASSEMBLY BILL 715

SECTION 36

1 investigation and has not been disposed of pursuant to a court order at the
2 completion of a criminal action or proceeding, shall make reasonable efforts to notify
3 all persons who have or may have an authorized rightful interest in the dangerous
4 weapon or ammunition of the application requirements under sub. (1) (1f). If, within
5 30 days after the notice, an application under sub. (1) (1f) is not made and the seized
6 dangerous weapon or ammunition is not returned by the officer under sub. (2), the
7 city, village, town or county or other custodian may retain the dangerous weapon or
8 ammunition and authorize its use by a law enforcement agency, except that a
9 dangerous weapon used in the commission of a homicide or a handgun, as defined
10 in s. 175.35 (1) (b), may not be retained. If a dangerous weapon other than a firearm
11 is not so retained, the city, village, town or county or other custodian shall safely
12 dispose of the dangerous weapon or, if the dangerous weapon is a motor vehicle, as
13 defined in s. 340.01 (35), sell the motor vehicle following the procedure under s.
14 973.075 (4). If a firearm or ammunition is not so retained, the city, village, town or
15 county or other custodian shall ship it to the state crime laboratories and it is then
16 the property of the laboratories. A person designated by the department of justice
17 may destroy any material for which the laboratories have no use or arrange for the
18 exchange of material with other public agencies. In lieu of destruction, shoulder
19 weapons for which the laboratory has no use shall be turned over to the department
20 of natural resources for sale and distribution of proceeds under s. 29.934.

SECTION 37. Effective date.

21
22 (1) This act takes effect on ~~the first day of the 6th month beginning after~~

23 publication.

July 1, 2005

24 (END)

2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3720/linsch
CMH:.....

INSERT CMH

01
~~Penalties for violating these prohibitions depend on the amount of marijuana involved.~~ If the crime involves 200 grams or less or four or fewer marijuana plants, the person is subject to a fine not to exceed \$10,000 or imprisonment not to exceed three years and six months, or both. If the crime involves more than 200 grams but not more than 1,000 grams or more than four plants but not more than 20 plants, the person is subject to a fine not to exceed \$10,000 or imprisonment not to exceed six years, or both. If the crime involves more than 1,000 grams but not more than 2,500 grams or more than 20 plants but not more than 50 plants, the person is subject to a fine not to exceed \$25,000 or imprisonment not to exceed 10 years, or both. If the crime involves more than 2,500 grams but not more than 10,000 grams or more than 50 plants but not more than 200 plants, the person is subject to a fine not to exceed \$25,000 or imprisonment not to exceed 12 years and 6 months, or both. If the crime involves more than 10,000 grams or more than 200 plants, the person is subject to a fine not to exceed \$50,000 or imprisonment not to exceed 15 years, or both.

Current law also prohibits a person from possessing or attempting to possess marijuana. A person who violates this prohibition may be fined not more than \$1,000 or imprisoned for not more than six months or both for a first conviction. For a second or subsequent conviction, the person may be subject to a fine not to exceed \$10,000 or imprisonment not to exceed three years and six months, or both. In addition, a town, village, city, or county may enact an ordinance that prohibits the possession of 25 grams or less of marijuana. A person who violates the ordinance is subject to a forfeiture.

1
2 Insert 7-6

3 ~~SECTION 4~~[#] 289.33 (3) (d) of the statutes is amended to read:

4 289.33 (3) (d) "Local approval" includes any requirement for a permit, license,
5 authorization, approval, variance or exception or any restriction, condition of
6 approval or other restriction, regulation, requirement or prohibition imposed by a
7 charter ordinance, general ordinance, zoning ordinance, resolution or regulation by
8 a town, city, village, county or special purpose district, including without limitation
9 because of enumeration any ordinance, resolution or regulation adopted under s.
10 59.03 (2), 59.11 (5), 59.42 (1), 59.48, 59.51 (1) and (2), 59.52 (2), (5), (6), (7), (8), (9),
11 (11), (12), (13), (15), (16), (17), (18), (19), (20), (21), (22), (23), (24), (25), (26) and (27),

1 59.53 (1), (2), (3), (4), (5), (7), (8), (9), (11), (12), (13), (14), (15), (19), (20) and (23),
2 59.535 (2), (3) and (4), 59.54 (1), (2), (3), (4), (4m), (5), (6), (7), (8), (10), (11), (12), (16),
3 (17), (18), (19), (20), (21), (22), (23), (24), (25) (a), and (26), 59.55 (3), (4), (5) and (6),
4 59.56 (1), (2), (4), (5), (6), (7), (9), (10), (11), (12), (12m), (13) and (16), 59.57 (1), 59.58
5 (1) and (5), 59.62, 59.69, 59.692, 59.693, 59.696, 59.697, 59.698, 59.70 (1), (2), (3), (5),
6 (7), (8), (9), (10), (11), (21), (22) and (23), 59.79 (1), (2), (3), (4), (5), (6), (7), (8), (10) and
7 (11), 59.792 (2) and (3), 59.80, 59.82, 60.10, 60.22, 60.23, 60.54, 60.77, 61.34, 61.35,
8 61.351, 61.354, 62.11, 62.23, 62.231, 62.234, 66.0101, 66.0415, 87.30, 91.73, 196.58,
9 200.11 (8), 236.45, 281.43 or 349.16 or subch. VIII of ch. 60.

History: 1981 c. 374; 1983 a. 128; 1983 a. 282 ss. 6 to 32, 34; 1983 a. 416 s. 19; 1983 a. 532 s. 36; 1983 a. 538; 1985 a. 182 s. 57; 1987 a. 27, 204, 399; 1987 a. 403 s. 256; 1991 a. 39; 1995 a. 201; 1995 a. 227 s. 626; Stats. 1995 s. 289.33; 1997 a. 35, 241; 1999 a. 83, 150; 2001 a. 38.

The defense provided under the bill does not apply if the person possesses or attempts to possess marijuana under the following circumstances: 1) the person drives or operates a motor vehicle while under the influence of marijuana; 2) while under the influence of marijuana, the person operates heavy machinery or engages in any other conduct that endangers the health or well-being of another person; 3) the person smokes marijuana on a bus, at the person's workplace, on school premises, in an adult or juvenile correctional facility or jail, at a public park, beach, or recreation center, or at a youth center. In addition, if the putative qualifying patient is under 18 years of age, the defense applies only if the person's parent, guardian, or legal custodian agrees to serve as a primary caregiver for the person. The bill defines a primary caregiver as a person who is at least 18 years old and who has agreed to be responsible for managing a qualifying patient's medical use of marijuana.

The defense provided under the bill also applies under certain circumstances to a primary caregiver for any qualifying patient (regardless of the qualifying patient's age), if the primary caregiver possesses, cultivates, transfers, or transports marijuana or acquires marijuana seeds to facilitate the qualifying patient's medical use of marijuana. The defense applies to the primary caregiver only if it is not practicable for the qualifying patient to acquire, possess, cultivate, or transport marijuana or acquire marijuana seeds independently or if the qualifying patient is under 18. The defense also applies to offenses involving drug paraphernalia if the qualifying patient uses the drug paraphernalia for the medical use of marijuana.

Registry for medical users of marijuana

INS
A

The bill requires DHFS to establish a registry for medical users of marijuana. Under the bill, a person claiming to be a qualifying patient may apply for a registry identification card by submitting to DHFS a signed application, accompanied by a statement from his or her physician documenting that the person has or is undergoing a debilitating medical condition or treatment and that the potential benefits to the person of using marijuana outweigh the health risks involved (a "written certification"). DHFS must then verify the information. If it is complete and correct, DHFS must issue the person a registry identification card. A qualifying patient and one of his or her primary caregivers may also jointly apply for a registry identification card for the primary caregiver. DHFS may not disclose that it has issued to a person a registry identification card, or information from an application for one, except to a law enforcement agency for the purpose of verifying that a person possesses a valid registry identification card. A registry identification card is valid for one year, unless revoked sooner by DHFS based on a change of circumstances, and may be renewed. DHFS may not charge a fee for issuing a registry identification card.

Effect on federal law

This bill changes only state law regarding marijuana. Federal law generally prohibits persons from manufacturing, delivering, or possessing marijuana and applies to both intrastate and interstate violations.

2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB
.....

sub-sub
(B)(I)
Study

This bill requires the Board of Regents of the University of Wisconsin System to conduct a study on the medical use of smokeable marijuana using randomized, controlled trials and to deposit any private funding for the study in the general fund to offset the amount appropriated for the study.

INS
MSL
1/NS
4-1
MSL
✓ # SECTION #, 20005 (3) (Schedule) of the statutes
20.285 University of Wisconsin System

2003-04

2004-05

(1) UNIVERSITY EDUCATION, RESEARCH AND PUBLIC
SERVICE

(fw) (I) Medical use of marijuana study GPR ✓ A 1,000,000 1,000,000

SECTION # 20.285 (1) (fw) of the statutes is created to read:

20.285 (1) (fw) Medical use of marijuana study. The amounts in the schedule for the study under s. 36.25 (47).

SECTION # 36.25 (47) of the statutes is created to read:

36.25 (47) MEDICAL USE OF MARIJUANA STUDY. Beginning no later than July 1, 2004, the board shall conduct a study on the medical use of smokeable marijuana using randomized, controlled trials. The board may use funds appropriated under s. 20.285 (1) (fw) for the study under this subsection. If the board receives any private funds for the study under this subsection, the board shall deposit those funds in the general fund.

END of Insert

at the appropriate place, insert the following amounts for the purposes indicated

1 60.23 (21) DRUG PARAPHERNALIA. Adopt an ordinance to prohibit conduct that
2 is the same as that prohibited by s. 961.573 (2), 961.574 (2) or 961.575 (2). Any
3 ordinance enacted under this subsection shall provide a person prosecuted under it
4 with the defenses that the person has under s. 961.5755 to prosecutions under s.
5 961.573 (1), 961.574 (1), or 961.575 (1).

6 SECTION 4. 66.0107 (1) (bm) of the statutes is amended to read:

7 66.0107 (1) (bm) Enact and enforce an ordinance to prohibit the possession of
8 25 grams or less of marijuana, as defined in s. 961.01 (14), subject to this paragraph
9 and the exceptions in s. 961.41 (3g) (intro.), and provide a forfeiture for a violation
10 of the ordinance; except that any. Any ordinance enacted under this paragraph shall
11 provide a person prosecuted under it with the defenses that the person has under s.
12 961.436 to prosecutions under s. 961.41 (1) (h), (1m) (h), or (3g) (e). No person who
13 is charged with possession of more than 25 grams of marijuana, or who is charged
14 with possession of any amount of marijuana following a conviction for possession of
15 marijuana, in this state shall not may be prosecuted under this paragraph.

16 SECTION 5. 146.45 of the statutes is created to read:

17 **146.45 Medical marijuana registry program. (1) DEFINITIONS.** In this
18 section:

19 (a) "Applicant" means a person who is applying for a registry identification card
20 under sub. (2) (a). ✓

21 (b) "Debilitating medical condition or treatment" has the meaning given in s.
22 961.01 (5m). ✓

23 (c) "Medical use of tetrahydrocannabinols" has the meaning given in s. 961.01
24 (14g). ✓

25 (d) "Primary caregiver" has the meaning given in s. 961.01 (19m). ✓

INS
6-5

✓

(e) "Qualifying patient" has the meaning given in s. 961.01 (20hm).✓

(f) "Registrant" means a person to whom a registry identification card is issued under sub. (4).✓

(g) "Registry identification card" means a document issued by the department under this section that identifies a person as a qualifying patient or primary caregiver.

(h) "Written certification" means a statement made by a person's physician if all of the following apply:

⑨ ^{1.} ~~(a)~~ The statement indicates that, in the physician's professional opinion, the person has or is undergoing a debilitating medical condition or treatment and the potential benefits of the person's use of tetrahydrocannabinols under s. 961.01 (14g) (a) ✓ would likely outweigh the health risks for the person.

⑬ ^{2.} ~~(b)~~ The statement indicates that the opinion described in ~~part (a)~~ ^{subd 10} was formed after a full assessment, made in the course of a bona fide physician-patient relationship, of the person's medical history and current medical condition.

⑮ ^{3.} ~~(c)~~ The statement is signed by the physician or is contained in the person's medical records.

(2) APPLICATION. (a) An adult who is claiming to be a qualifying patient may apply for a registry identification card by submitting a signed application form containing or accompanied by all of the following to the department:

1. His or her name, address, and date of birth.

2. A written certification.

3. The name, address, and telephone number of the person's current physician, as listed in the written certification.

1 (b) A qualifying patient who is an adult and who has been issued a registry
2 identification card under sub. (4)✓ or an applicant may jointly apply with another
3 adult to the department for a registry identification card for the other adult,
4 designating him or her as a primary caregiver for the qualifying patient or the
5 applicant. ^{Both} Persons who jointly apply for a registry identification card under this
6 paragraph shall ~~both~~ sign the application form, which shall contain the name,
7 address, and date of birth of the individual applying to be registered as a primary
8 caregiver.

9 (c) The department shall promulgate rules specifying how a parent, guardian,
10 or person having legal custody of a child may apply for a registry identification card
11 for himself or herself and for the child and the circumstances under which the
12 department may approve or deny the application.

13 (d) The department may not charge any fees in connection with an application
14 for or the issuance of a registry identification card.

15 (3) PROCESSING THE APPLICATION. The department shall verify the information
16 contained in or accompanying an application submitted under sub. (2)✓ and shall
17 approve or deny the application within 30 days after receiving it. ^{Except as provided in sub. (2)✓} The department
18 may deny an application submitted under sub. (2) only if the required information
19 has not been provided or if false information has been provided. (c)✓

20 (4) ISSUING A REGISTRY IDENTIFICATION CARD. The department shall issue a
21 registry identification card within 5 days after approving an application under sub.
22 (3)✓. Unless voided under sub. (5) (b)✓ or revoked under rules issued by the department
23 under sub. (7) (d)✓, a registry identification card shall expire one year from the date
24 of issuance. A registry identification card shall contain all of the following:

1 (a) The name, address, and date of birth of the registrant and of the primary
2 caregivers, if the registrant is a qualifying patient, or of the qualifying patient if the
3 registrant is a primary caregiver.

4 (b) The date of issuance and expiration date of the registry identification card.

5 (c) A photograph of the registrant.


6 (d) Other information that the department may require by rule.

7 (5) ADDITIONAL INFORMATION TO BE PROVIDED BY REGISTRANT. (a) 1. An adult
8 registrant shall notify the department of any change in the registrant's name and
9 address. An adult registrant who is a qualifying patient shall notify the department
10 of any change in his or her physician, of any significant improvement in his or her
11 health as it relates to his or her debilitating medical condition or treatment, and if
12 a registered primary caregiver no longer assists the registrant with the medical use
13 of tetrahydrocannabinols.

14 2. If a qualifying patient is a child, a primary caregiver for the child shall
15 provide the department with any information that the child, if he or she were an
16 adult, would have to provide under subd. 1. within 10 days after the date of the
17 change to which the information relates.

18 (b) If a registrant fails to notify the department within 10 days after any change
19 for which notification is required under par. (a) 1., his or her registry identification
20 card is void. If a registrant fails to comply with par. (a) 2., the registry identification
21 card for the qualifying patient to whom the information under par. (a) 2. relates is
22 void.

23 (c) If a qualifying patient's registry identification card becomes void under par.
24 (b), the registry identification card for each of the qualifying patient's primary



1 caregivers is void. The department shall send written notice of this fact to each such
2 primary caregiver.

3 (6) RECORDS. (a) The department shall maintain a list of all registrants.

4 (b) Notwithstanding s. 19.35[✓] and except as provided in par. (c), the department
5 may not disclose information from an application submitted or a registry
6 identification card issued under this section.

7 (c) The department may disclose to a state or local law enforcement agency
8 information from an application submitted by, or from a registry identification card
9 issued to, a specific person under this section, for the purpose of verifying that the
10 person possesses a valid registry identification card.

11 (7) RULES. The department shall promulgate rules to implement this section,
12 including the rules required under sub. (2) (c)[✓] and rules doing all of the following:

13 (a) Creating forms for applications to be used under sub. (2)[✓].

14 (b) Specifying how the department will verify the truthfulness of information
15 submitted on an application under sub. (2)[✓].

16 (c) Specifying how and under what circumstances registry identification cards
17 may be renewed.

18 (d) Specifying how and under what changed circumstances a registry
19 identification card may be revoked.

20 (e) Specifying under what circumstances a person whose application for a
21 registry identification card is denied may reapply.

22 SECTION 6. 146.46 of the statutes is created to read:

23 **146.46 Medical use of marijuana; debilitating medical condition or**
24 **treatment.** Notwithstanding s. 227.12 (1), any person may petition the department
25 to promulgate a rule to designate a medical condition or treatment as a debilitating

*End of insert
6-5*

1WS
19-61

SECTION 24. 968.12 (5) of the statutes is created to read:

2 968.12 (5) MEDICAL USE OF MARIJUANA REGISTRY CARDS. An application for a
3 registry identification card under s. 146.45 (2),[✓] the issuance of such a card under s.
4 146.45 (4),[✓] or a person's possession of such a card shall not, by itself, constitute
5 probable cause under sub. (1) or otherwise subject the person or property of the
6 person who is applying for, issued, or possessing the card to inspection by any
7 governmental agency.

8 SECTION 26. 968.19 of the statutes is renumbered 968.19 (1) and amended to
9 read:

10 968.19 (1) Property Except as provided in sub. (2), property seized under a
11 search warrant or validly seized without a warrant shall be safely kept by the officer,
12 who may leave it in the custody of the sheriff and take a receipt therefor, so long as
13 necessary for the purpose of being produced as evidence on any trial.

14 SECTION 27. 968.19 (2) of the statutes is created to read:

15 968.19 (2) A law enforcement agency that has seized a live marijuana plant is
16 not responsible for the plant's care and maintenance.

17 SECTION 28. 968.20 (1) of the statutes is renumbered 968.20 (1f), and 968.20
18 (1f) (intro.), as renumbered, is amended to read:

19 968.20 (1f) (intro.) Any Except as provided in sub. (1j), any person claiming the
20 right to possession of property seized pursuant to a search warrant or seized without
21 a search warrant may apply for its return to the circuit court for the county in which
22 the property was seized or where the search warrant was returned. The court shall
23 order such notice as it deems adequate to be given the district attorney and all
24 persons who have or may have an interest in the property and shall hold a hearing
25 to hear all claims to its true ownership. If the right to possession is proved to the

1 tetrahydrocannabinols he or she does so to alleviate the symptoms or effects of his
2 or her debilitating medical condition or treatment.

3 **SECTION 21.** 961.55 (8) of the statutes is amended to read:

4 961.55 (8) The failure, upon demand by any officer or employee designated in
5 s. 961.51 (1) or (2), of the person in occupancy or in control of land or premises upon
6 which the species of plants are growing or being stored, to produce an appropriate
7 federal registration, or proof that the person is the holder thereof, or a valid registry
8 identification card for the person constitutes authority for the seizure and forfeiture
9 of the plants.

10 **SECTION 22.** 961.555 (2m) of the statutes is created to read:

11 961.555 (2m) MEDICAL NECESSITY DEFENSE. (a) In an action to forfeit property
12 seized under s. 961.55, the person who was in possession of the property when it was
13 seized has a defense to the forfeiture of the property if any of the following applies:

14 1. The person was prosecuted under s. 961.41 (1) (h), (1m) (h), or (3g) (e),
15 961.573 (1), 961.574 (1), or 961.575 (1) in connection with the seized property but had
16 a valid defense under s. 961.436 (1), (2), or (3) (a) or 961.5755 (1) (a) or (2).

17 2. The person was not prosecuted under s. 961.41 (1) (h), (1m) (h), or (3g) (e),
18 961.573 (1), 961.574 (1), or 961.575 (1) in connection with the seized property, but,
19 if the person had been, he or she would have had a valid defense under s. 961.436 (1),
20 (2), or (3) (a) or 961.5755 (1) (a) or (2).

21 (b) The owner of property seized under s. 961.55 who is raising a defense under
22 par. (a) shall do so in the answer to the complaint that he or she serves under sub.
23 (2) (b). When a property owner raises such a defense in his or her answer, the state
24 must, as part of the burden of proof specified in sub. (3), prove that the facts
25 constituting the defense do not exist.

1 ~~3. Manage the person's medical use of tetrahydrocannabinols.~~

2 SECTION ~~18~~ 961.01 (20ht) of the statutes is created to read:

MS
9-17³
3 961.01 (20ht) "Registry identification card" has the meaning given in s. 146.45

4 (1) (g)✓

5 SECTION 19. 961.01 (20t) of the statutes is created to read:

6 961.01 (20t) "Treatment team" means a qualifying patient and his or her
7 primary caregivers.

8 SECTION 20. 961.436 of the statutes is created to read:

9 961.436 Medical use defense in cases involving
10 tetrahydrocannabinols. (1) A member of a qualifying patient's treatment team
11 has a defense to prosecution under s. 961.41 (1) (h) or (1m) (h) for manufacturing, or
12 possessing with intent to manufacture, tetrahydrocannabinols if all of the following
13 apply:

14 (a) The manufacture or possession is a medical use of tetrahydrocannabinols
15 by the treatment team.

16 (b) The amount of tetrahydrocannabinols does not exceed an adequate supply.

17 (2) A member of a qualifying patient's treatment team has a defense to
18 prosecution under s. 961.41 (1) (h) or (1m) (h) for distributing or delivering, or
19 possessing with intent to distribute or deliver, tetrahydrocannabinols to another
20 member of the treatment team if all of the following apply:

21 (a) The distribution, delivery, or possession is a medical use of
22 tetrahydrocannabinols by the treatment team.

23 (b) The amount of tetrahydrocannabinols does not exceed an adequate supply.



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-37201-02
CMH&MGD&MJL:wlj:pg

2003 BILL

Today

Monday

only changes
are in analyses
and P. 6

REGEN

1 AN ACT *to renumber* 961.01 (1); *to renumber and amend* 59.54 (25), 968.19
2 and 968.20 (1); *to amend* 60.23 (21), 66.0107 (1) (bm), 173.12 (1m), 289.33 (3)
3 (d), 349.02 (2) (b) 4., 961.55 (8), 961.555 (2) (a), 961.56 (1), 968.20 (3) (a) and
4 968.20 (3) (b); and *to create* 20.285 (1) (fw), 36.25 (47), 59.54 (25) (b) 2., 59.54
5 (25) (b) 3., 146.45, 961.01 (1g), 961.01 (5m), 961.01 (11t), 961.01 (14g), 961.01
6 (19m), 961.01 (20hm), 961.01 (20ht), 961.01 (20t), 961.37, 961.436, 961.555 (2)
7 (e), 961.555 (2m), 961.5755, 968.073, 968.12 (5), 968.19 (2), 968.20 (1d) and
8 968.20 (1j) of the statutes; **relating to:** medical use of marijuana, requiring the
9 exercise of rule-making authority, making an appropriation, and providing a
10 penalty.

Analysis by the Legislative Reference Bureau

~~This bill makes the following changes to current law with respect to marijuana
(also known as tetrahydrocannabinols)~~

Current prohibitions and penalties regarding marijuana

Current law prohibits the manufacture, distribution, and delivery of marijuana
and the possession of marijuana with intent to manufacture, distribute, or deliver

BILL

it. Penalties for violating these prohibitions depend on the amount of marijuana involved. If the crime involves 200 grams or less or four or fewer marijuana plants, the person is subject to a fine not to exceed \$10,000 or imprisonment not to exceed three years and six months, or both. If the crime involves more than 200 grams but not more than 1,000 grams, or more than four plants but not more than 20 plants, the person is subject to a fine not to exceed \$10,000 or imprisonment not to exceed six years, or both. If the crime involves more than 1,000 grams but not more than 2,500 grams, or more than 20 plants but not more than 50 plants, the person is subject to a fine not to exceed \$25,000 or imprisonment not to exceed 10 years, or both. If the crime involves more than 2,500 grams but not more than 10,000 grams, or more than 50 plants but not more than 200 plants, the person is subject to a fine not to exceed \$25,000 or imprisonment not to exceed 12 years and 6 months, or both. If the crime involves more than 10,000 grams or more than 200 plants, the person is subject to a fine not to exceed \$50,000 or imprisonment not to exceed 15 years, or both.

Current law also prohibits a person from possessing or attempting to possess marijuana. A person who violates this prohibition may be fined not more than \$1,000 or imprisoned for not more than six months or both for a first conviction. For a second or subsequent conviction, the person may be subject to a fine not to exceed \$10,000 or imprisonment not to exceed three years and six months, or both. In addition, a town, village, city, or county may enact an ordinance that prohibits the possession of 25 grams or less of marijuana. A person who violates the ordinance is subject to a forfeiture.

Current law also contains certain prohibitions regarding drug paraphernalia, which includes equipment, products, and materials used to produce, distribute, and use controlled substances, such as marijuana. Under current law, a person who uses drug paraphernalia or who possesses it with the primary intent to use it to produce, distribute, or use a controlled substance unlawfully may be fined not more than \$500 or imprisoned for not more than 30 days, or both. A person who delivers drug paraphernalia, possesses it with intent to deliver it, or manufactures it with intent to deliver it, knowing that it will be primarily used to produce, distribute, or use a controlled substance unlawfully, may be fined not more than \$1,000 or imprisoned for not more than 90 days, or both.

Medical necessity defense and immunity from arrest and prosecution

This bill establishes a medical necessity defense to marijuana-related prosecutions and property seizure (forfeiture) actions. A person may invoke this defense if he or she is a qualifying patient or, under certain circumstances, the primary caregiver for a qualifying patient. A “qualifying patient” is someone having or undergoing a debilitating medical condition or treatment, and a “primary caregiver” is a person who is at least 18 years old who has agreed to be responsible for managing a qualifying patient’s medical use of marijuana. The bill defines a debilitating medical condition to mean any of the following: 1) cancer, glaucoma, AIDS, a positive HIV test, or the treatment of these conditions; 2) a chronic or debilitating disease or medical condition or the treatment of such a disease or condition that causes cachexia (wasting away), severe pain, severe nausea, seizures,

BILL

or severe and persistent muscle spasms; 3) any other medical condition or any other treatment for a medical condition designated as a debilitating medical condition or treatment in rules promulgated by the Department of Health and Family Services (DHFS).

* A person may invoke this defense if he or she acquires, possesses, cultivates, transports, or uses marijuana to alleviate the symptoms or effects of his or her debilitating medical condition or treatment or, as a primary caregiver, acquires, possesses, cultivates, or transports marijuana to facilitate the qualifying patient's medical use of it, but only if no more than a reasonable amount of marijuana is involved. The defense applies also to defenses involving drug paraphernalia if the qualifying patient uses the paraphernalia for the medical use of marijuana. A person is presumed to have the defense if the person has a valid registry identification card from DHFS (~~See~~ ***Registry for medical users of marijuana*** below) if no more than a reasonable amount of marijuana is involved.

The bill also prohibits the arrest or prosecution of a person who acquires, possesses, cultivates, transports, or uses marijuana to alleviate the symptoms or effects of his or her debilitating medical condition or treatment or, as a primary caregiver, acquires, possesses, cultivates, or transports marijuana to facilitate the qualifying patient's medical use of it, if the person has a valid registry identification card from DHFS. This prohibition applies also to offenses involving drug paraphernalia if the qualifying patient uses the drug paraphernalia for the medical use of marijuana. This prohibition, however, applies only if no more than a reasonable amount of marijuana is involved. In addition, the bill prohibits the arrest or prosecution of or the imposition of any penalty on a physician who provides a written certification to a person in good faith. (See ***Registry for medical users of marijuana*** below.)

The defense provided under the bill and the prohibition on arrest and prosecution contained in the bill do not apply if the person possesses or attempts to possess marijuana under the following circumstances: 1) the person drives or operates a motor vehicle while under the influence of marijuana; 2) while under the influence of marijuana, the person operates heavy machinery or engages in any other conduct that endangers the health or well-being of another person; 3) the person smokes marijuana on a bus, at the person's workplace, on school premises, in an adult or juvenile correctional facility or jail, at a public park, beach, or recreation center, or at a youth center; or 4) the person has been convicted of distributing or delivering, or possessing with the intent to distribute and deliver, marijuana to another person. In addition, if the putative qualifying patient is under 18 years of age, the defense provided under the bill and the prohibition on arrest and prosecution contained in the bill apply only if the person's parent, guardian, or legal custodian agrees to serve as a primary caregiver for the person.

Registry for medical users of marijuana

The bill requires DHFS to establish a registry for medical users of marijuana. Under the bill, a person claiming to be a qualifying patient may apply for a registry identification card by submitting to DHFS a signed application, accompanied by a statement from his or her physician documenting that the person has or is

BILL

undergoing a debilitating medical condition or treatment and that the potential benefits to the person of using marijuana outweigh the health risks involved (a “written certification”). DHFS must then verify the information. If it is complete and correct, DHFS must issue the person a registry identification card. A qualifying patient and one of his or her primary caregivers may also jointly apply for a registry identification card for the primary caregiver. DHFS may not disclose that it has issued to a person a registry identification card, or information from an application for one, except to a law enforcement agency for the purpose of verifying that a person possesses a valid registry identification card. A registry identification card is valid for one year, unless revoked sooner by DHFS based on a change of circumstances, and may be renewed. DHFS may not charge a fee for issuing a registry identification card.

Registered marijuana distribution organizations

The bill authorizes certain nonprofit corporations to deliver or distribute tetrahydrocannabinols or drug paraphernalia or possess or manufacture them with the intent to deliver or distribute them to facilitate the medical use of marijuana. Such an organization may deliver or distribute marijuana or drug paraphernalia to a qualifying patient or a qualifying patient’s primary caregiver only to facilitate the qualifying patient’s medical use of marijuana. A nonprofit corporation is eligible to engage in these activities if it is organized for the purpose of manufacturing, delivering, distributing, or possessing marijuana, drug paraphernalia, and educational materials to facilitate the medical use of marijuana. It may not employ or utilize the services of any person who has been convicted of a drug offense or obtain marijuana from outside the state in violation of federal law. The organization must register annually with DHFS.

Study

This bill requires the Board of Regents of the University of Wisconsin System to conduct a study on the medical use of smokable marijuana using randomized, controlled trials and to deposit any private funding for the study into the general fund to offset the amount appropriated for the study.

Effect on federal law

This bill changes only state law regarding marijuana. Federal law generally prohibits persons from manufacturing, delivering, or possessing marijuana and applies to both intrastate and interstate violations.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 1 **SECTION 1.** 20.005 (3) (schedule) of the statutes: at the appropriate place, insert
- 2 the following amounts for the purposes indicated:

CRIME
tag

BILL

2003-04 2004-05

20.285 University of Wisconsin System

(1) UNIVERSITY EDUCATION, RESEARCH AND PUBLIC
SERVICE

(fw) *Medical use of marijuana study* GPR A 1,000,000 1,000,000

SECTION 2. 20.285 (1) (fw) of the statutes is created to read:

20.285 (1) (fw) *Medical use of marijuana study*. The amounts in the schedule
for the study under s. 36.25 (47).

SECTION 3. 36.25 (47) of the statutes is created to read:

36.25 (47) MEDICAL USE OF MARIJUANA STUDY. Beginning no later than July 1,
2004, the board shall conduct a study on the medical use of smokable marijuana
using randomized, controlled trials. The board may use funds appropriated under
s. 20.285 (1) (fw) for the study under this subsection. If the board receives any private
funds for the study under this subsection, the board shall deposit those funds into
the general fund.

SECTION 4. 59.54 (25) of the statutes is renumbered 59.54 (25) (a) and amended
to read:

59.54 (25) (a) The board may enact and enforce an ordinance to prohibit the
possession of 25 grams or less of marijuana, as defined in s. 961.01 (14), subject to
par. (b) and the exceptions in s. 961.41 (3g) (intro.), and provide a forfeiture for a
~~violation of the ordinance; except that any person who is charged with possession of~~
~~more than 25 grams of marijuana, or who is charged with possession of any amount~~
~~of marijuana following a conviction for possession of marijuana, in this state shall~~
~~not be prosecuted under this subsection.~~ Any ordinance enacted under this

BILL

SECTION 4

1 paragraph shall provide a person who is prosecuted under it with the defenses that
2 the person has under s. 961.436 to prosecutions under s. 961.41 (1) (h), (1m) (h), or
3 (3g) (e). ↓

4 (b) 1^{plain} Any ordinance enacted under ~~this subsection~~ par. (a) does not apply in
5 any municipality that has enacted an ordinance prohibiting the possession of
6 marijuana.

7 **SECTION 5.** 59.54 (25) (b) 2. of the statutes is created to read:

8 59.54 (25) (b) 2. A person may not be prosecuted under an ordinance enacted
9 under par. (a) if, under s. 968.073 (2), the person would not be subject to prosecution
10 under s. 961.41 (3g) (e).

11 **SECTION 6.** 59.54 (25) (b) 3. of the statutes is created to read:

12 59.54 (25) (b) 3. No person who is charged with possession of more than 25
13 grams of marijuana, or who is charged with possession of any amount of marijuana
14 following a conviction for possession of marijuana, in this state may be prosecuted
15 under an ordinance enacted under par. (a).

16 **SECTION 7.** 60.23 (21) of the statutes is amended to read:

17 60.23 (21) DRUG PARAPHERNALIA. Adopt an ordinance to prohibit conduct that
18 is the same as that prohibited by s. 961.573 (2), 961.574 (2) or 961.575 (2). Any
19 ordinance enacted under this subsection shall provide a person prosecuted under it
20 with the defenses that the person has under s. 961.5755 to prosecutions under s.
21 961.573 (1), 961.574 (1), or 961.575 (1). A person may not be prosecuted under an
22 ordinance enacted under this subsection if, under s. 968.073 (3), the person would
23 not be subject to prosecution under s. 961.573 (2) or 961.574 (2).

24 **SECTION 8.** 66.0107 (1) (bm) of the statutes is amended to read:

BILL

1 66.0107 (1) (bm) Enact and enforce an ordinance to prohibit the possession of
2 25 grams or less of marijuana, as defined in s. 961.01 (14), subject to this paragraph
3 and the exceptions in s. 961.41 (3g) (intro.), and provide a forfeiture for a violation
4 of the ordinance; except that any. Any ordinance enacted under this paragraph shall
5 provide a person prosecuted under it with the defenses that the person has under s.
6 961.436 to prosecutions under s. 961.41 (1) (h), (1m) (h), or (3g) (e). A person may not
7 be prosecuted under an ordinance enacted under this paragraph if, under s. 968.073
8 (2), the person would not be subject to prosecution under s. 961.41 (3g) (e). No person
9 who is charged with possession of more than 25 grams of marijuana, or who is
10 charged with possession of any amount of marijuana following a conviction for
11 possession of marijuana, in this state ~~shall not~~ may be prosecuted under this
12 paragraph.

13 **SECTION 9.** 146.45 of the statutes is created to read:

14 **146.45 Medical marijuana registry program. (1) DEFINITIONS.** In this
15 section:

16 (a) “Applicant” means a person who is applying for a registry identification card
17 under sub. (2) (a).

18 (b) “Debilitating medical condition or treatment” has the meaning given in s.
19 961.01 (5m).

20 (c) “Medical use of tetrahydrocannabinols” has the meaning given in s. 961.01
21 (14g).

22 (d) “Primary caregiver” has the meaning given in s. 961.01 (19m).

23 (e) “Qualifying patient” has the meaning given in s. 961.01 (20hm).

24 (f) “Registrant” means a person to whom a registry identification card is issued
25 under sub. (4).

BILL**SECTION 9**

1 (g) "Registry identification card" means a document issued by the department
2 under this section that identifies a person as a qualifying patient or primary
3 caregiver.

4 (h) "Written certification" means a statement made by a person's physician if
5 all of the following apply:

6 1. The statement indicates that, in the physician's professional opinion, the
7 person has or is undergoing a debilitating medical condition or treatment and the
8 potential benefits of the person's use of tetrahydrocannabinols under s. 961.01 (14g)

9 (a) would likely outweigh the health risks for the person.

10 2. The statement indicates that the opinion described in subd. 1. was formed
11 after a full assessment, made in the course of a bona fide physician-patient
12 relationship, of the person's medical history and current medical condition.

13 3. The statement is signed by the physician or is contained in the person's
14 medical records.

15 (2) APPLICATION. (a) An adult who is claiming to be a qualifying patient may
16 apply for a registry identification card by submitting a signed application form
17 containing or accompanied by all of the following to the department:

18 1. His or her name, address, and date of birth.

19 2. A written certification.

20 3. The name, address, and telephone number of the person's current physician,
21 as listed in the written certification.

22 (b) A qualifying patient who is an adult and who has been issued a registry
23 identification card under sub. (4) or an applicant may jointly apply with another
24 adult to the department for a registry identification card for the other adult,
25 designating him or her as a primary caregiver for the qualifying patient or the

BILL

1 applicant. Both persons who jointly apply for a registry identification card under this
2 paragraph shall sign the application form, which shall contain the name, address,
3 and date of birth of the individual applying to be registered as a primary caregiver.

4 (c) The department shall promulgate rules specifying how a parent, guardian,
5 or person having legal custody of a child may apply for a registry identification card
6 for himself or herself and for the child and the circumstances under which the
7 department may approve or deny the application.

8 (d) The department may not charge any fees in connection with an application
9 for or the issuance of a registry identification card.

10 (3) PROCESSING THE APPLICATION. The department shall verify the information
11 contained in or accompanying an application submitted under sub. (2) and shall
12 approve or deny the application within 30 days after receiving it. Except as provided
13 in sub. (2) (c), the department may deny an application submitted under sub. (2) only
14 if the required information has not been provided or if false information has been
15 provided.

16 (4) ISSUING A REGISTRY IDENTIFICATION CARD. The department shall issue a
17 registry identification card within 5 days after approving an application under sub.
18 (3). Unless voided under sub. (5) (b) or revoked under rules issued by the department
19 under sub. (7) (d), a registry identification card shall expire one year from the date
20 of issuance. A registry identification card shall contain all of the following:

21 (a) The name, address, and date of birth of the registrant and of the primary
22 caregivers, if the registrant is a qualifying patient, or of the qualifying patient if the
23 registrant is a primary caregiver.

24 (b) The date of issuance and expiration date of the registry identification card.

25 (c) A photograph of the registrant.

BILL

1 (d) Other information that the department may require by rule.

2 (5) ADDITIONAL INFORMATION TO BE PROVIDED BY REGISTRANT. (a) 1. An adult
3 registrant shall notify the department of any change in the registrant's name and
4 address. An adult registrant who is a qualifying patient shall notify the department
5 of any change in his or her physician, of any significant improvement in his or her
6 health as it relates to his or her debilitating medical condition or treatment, and if
7 a registered primary caregiver no longer assists the registrant with the medical use
8 of tetrahydrocannabinols.

9 2. If a qualifying patient is a child, a primary caregiver for the child shall
10 provide the department with any information that the child, if he or she were an
11 adult, would have to provide under subd. 1. within 10 days after the date of the
12 change to which the information relates.

13 (b) If a registrant fails to notify the department within 10 days after any change
14 for which notification is required under par. (a) 1., his or her registry identification
15 card is void. If a registrant fails to comply with par. (a) 2., the registry identification
16 card for the qualifying patient to whom the information under par. (a) 2. relates is
17 void.

18 (c) If a qualifying patient's registry identification card becomes void under par.
19 (b), the registry identification card for each of the qualifying patient's primary
20 caregivers is void. The department shall send written notice of this fact to each such
21 primary caregiver.

22 (6) RECORDS. (a) The department shall maintain a list of all registrants.

23 (b) Notwithstanding s. 19.35 and except as provided in par. (c), the department
24 may not disclose information from an application submitted or a registry
25 identification card issued under this section.

BILL

1 (c) The department may disclose to a state or local law enforcement agency
2 information from an application submitted by, or from a registry identification card
3 issued to, a specific person under this section, for the purpose of verifying that the
4 person possesses a valid registry identification card.

5 (7) RULES. The department shall promulgate rules to implement this section,
6 including the rules required under sub. (2) (c) and rules doing all of the following:

7 (a) Creating forms for applications to be used under sub. (2).

8 (b) Specifying how the department will verify the truthfulness of information
9 submitted on an application under sub. (2).

10 (c) Specifying how and under what circumstances registry identification cards
11 may be renewed.

12 (d) Specifying how and under what changed circumstances a registry
13 identification card may be revoked.

14 (e) Specifying under what circumstances a person whose application for a
15 registry identification card is denied may reapply.

16 **SECTION 10.** 173.12 (1m) of the statutes is amended to read:

17 173.12 (1m) If an animal has been seized because it is alleged that the animal
18 has been used in or constitutes evidence of any crime specified in s. 951.08, the
19 animal may not be returned to the owner by an officer under s. 968.20 (2). In any
20 hearing under s. 968.20 ~~(1)~~ (1f), the court shall determine if the animal is needed as
21 evidence or there is reason to believe that the animal has participated in or been
22 trained for fighting. If the court makes such a finding, the animal shall be retained
23 in custody.

24 **SECTION 11.** 289.33 (3) (d) of the statutes is amended to read:

BILL**SECTION 11**

289.33 (3) (d) “Local approval” includes any requirement for a permit, license, authorization, approval, variance or exception or any restriction, condition of approval or other restriction, regulation, requirement or prohibition imposed by a charter ordinance, general ordinance, zoning ordinance, resolution or regulation by a town, city, village, county or special purpose district, including without limitation because of enumeration any ordinance, resolution or regulation adopted under s. 59.03 (2), 59.11 (5), 59.42 (1), 59.48, 59.51 (1) and (2), 59.52 (2), (5), (6), (7), (8), (9), (11), (12), (13), (15), (16), (17), (18), (19), (20), (21), (22), (23), (24), (25), (26) and (27), 59.53 (1), (2), (3), (4), (5), (7), (8), (9), (11), (12), (13), (14), (15), (19), (20) and (23), 59.535 (2), (3) and (4), 59.54 (1), (2), (3), (4), (4m), (5), (6), (7), (8), (10), (11), (12), (16), (17), (18), (19), (20), (21), (22), (23), (24), (25) (a), and (26), 59.55 (3), (4), (5) and (6), 59.56 (1), (2), (4), (5), (6), (7), (9), (10), (11), (12), (12m), (13) and (16), 59.57 (1), 59.58 (1) and (5), 59.62, 59.69, 59.692, 59.693, 59.696, 59.697, 59.698, 59.70 (1), (2), (3), (5), (7), (8), (9), (10), (11), (21), (22) and (23), 59.79 (1), (2), (3), (4), (5), (6), (7), (8), (10) and (11), 59.792 (2) and (3), 59.80, 59.82, 60.10, 60.22, 60.23, 60.54, 60.77, 61.34, 61.35, 61.351, 61.354, 62.11, 62.23, 62.231, 62.234, 66.0101, 66.0415, 87.30, 91.73, 196.58, 200.11 (8), 236.45, 281.43 or 349.16 or subch. VIII of ch. 60.

SECTION 12. 349.02 (2) (b) 4. of the statutes is amended to read:

349.02 (2) (b) 4. Local ordinances enacted under s. 59.54 (25) (a), 60.23 (21) or 66.0107 (1) (bm).

SECTION 13. 961.01 (1) of the statutes is renumbered 961.01 (1m).

SECTION 14. 961.01 (1g) of the statutes is created to read:

961.01 (1g) “Adequate supply” means an amount of tetrahydrocannabinols that is not more than is reasonably necessary to ensure the uninterrupted availability of tetrahydrocannabinols for their medical use by a treatment team.

BILL

1 **SECTION 15.** 961.01 (5m) of the statutes is created to read:

2 961.01 (5m) “Debilitating medical condition or treatment” means any of the
3 following:

4 (a) Cancer, glaucoma, acquired immunodeficiency syndrome, a positive test for
5 the presence of HIV, antigen or nonantigenic products of HIV, or an antibody to HIV,
6 or the treatment of these conditions.

7 (b) A chronic or debilitating disease or medical condition or the treatment of
8 such a disease or condition that causes cachexia, severe pain, severe nausea,
9 seizures, or severe and persistent muscle spasms.

10 (c) Any other medical condition or any other treatment for a medical condition
11 designated as a debilitating medical condition or treatment in rules promulgated by
12 the department of health and family services under s. 961.436 (5).

13 **SECTION 16.** 961.01 (11t) of the statutes is created to read:

14 961.01 (11t) “HIV” means any strain of human immunodeficiency virus, which
15 causes acquired immunodeficiency syndrome.

16 **SECTION 17.** 961.01 (14g) of the statutes is created to read:

17 961.01 (14g) “Medical use of tetrahydrocannabinols” means any of the
18 following:

19 (a) The use of tetrahydrocannabinols by a qualifying patient to alleviate the
20 symptoms or effects of the patient’s debilitating medical condition or treatment.

21 (b) The acquisition, possession, cultivation, or transportation of
22 tetrahydrocannabinols by a qualifying patient if done to facilitate his or her use of
23 the tetrahydrocannabinols under par. (a).

24 (c) The acquisition, possession, cultivation, or transportation of
25 tetrahydrocannabinols by a primary caregiver of a qualifying patient, the transfer

BILL**SECTION 17**

1 of tetrahydrocannabinols between a qualifying patient and his or her primary
2 caregivers, or the transfer of tetrahydrocannabinols between persons who are
3 primary caregivers for the same qualifying patient if all of the following apply:

4 1. The acquisition, possession, cultivation, transportation, or transfer of the
5 tetrahydrocannabinols is done to facilitate the qualifying patient's use of
6 tetrahydrocannabinols under par. (a) or (b).

7 2. It is not practicable for the qualifying patient to acquire, possess, cultivate,
8 or transport the tetrahydrocannabinols independently or the qualifying patient is
9 under 18 years of age.

10 **SECTION 18.** 961.01 (19m) of the statutes is created to read:

11 961.01 (19m) "Primary caregiver" means a person who is at least 18 years of
12 age and who has agreed to help a qualifying patient in his or her medical use of
13 tetrahydrocannabinols.

14 **SECTION 19.** 961.01 (20hm) of the statutes is created to read:

15 961.01 (20hm) "Qualifying patient" means a person who has been diagnosed
16 by a physician as having or undergoing a debilitating medical condition or treatment
17 but does not include a person under the age of 18 years unless all of the following
18 apply:

19 (a) The person's physician has explained the potential risks and benefits of the
20 medical use of tetrahydrocannabinols to the person and to a parent, guardian, or
21 person having legal custody of the person.

22 (b) The parent, guardian, or person having legal custody provides the physician
23 a written statement consenting to do all of the following:

24 1. Allow the person's medical use of tetrahydrocannabinols.

25 2. Serve as a primary caregiver for the person.

BILL

1 3. Manage the person's medical use of tetrahydrocannabinols.

2 **SECTION 20.** 961.01 (20ht) of the statutes is created to read:

3 961.01 (20ht) "Registry identification card" has the meaning given in s. 146.45
4 (1) (g).

5 **SECTION 21.** 961.01 (20t) of the statutes is created to read:

6 961.01 (20t) "Treatment team" means a qualifying patient and his or her
7 primary caregivers.

8 **SECTION 22.** 961.37 of the statutes is created to read:

9 **961.37 Distribution of medical marijuana.** (1) In this section:

10 (a) "Department" means the department of health and family services.

11 (b) "Drug paraphernalia" has the meaning given in s. 961.571 (1).

12 (c) "Registered organization" means a nonprofit corporation that is registered
13 under sub. (4) and that is organized for the purpose of manufacturing, delivering,
14 distributing, or possessing tetrahydrocannabinols, drug paraphernalia, and
15 educational materials to facilitate the medical use of tetrahydrocannabinols.

16 (2) (a) A registered organization may deliver or distribute
17 tetrahydrocannabinols or drug paraphernalia to a person who has provided the
18 registered organization with a copy of a valid registry identification card to facilitate
19 the medical use of tetrahydrocannabinols by a qualifying patient's treatment team.

20 (b) A registered organization may possess or manufacture
21 tetrahydrocannabinols or drug paraphernalia with the intent to deliver or distribute
22 them under par. (a).

23 (c) A federal, state, or local law enforcement agency may deliver or distribute
24 tetrahydrocannabinols or drug paraphernalia to a registered organization.

BILL**SECTION 22**

1 (3) A registered organization may not employ or utilize the services of any
2 person who has been convicted of a crime under this chapter nor may it,
3 notwithstanding sub. (2), obtain tetrahydrocannabinols from outside the state in
4 violation of federal law.

5 (4) Before engaging in any conduct authorized under sub. (2), a registered
6 organization shall file with the department a registration statement in a form to be
7 determined by the department. Thereafter, the organization shall annually file a
8 registration statement with the department in accordance with department rules.

9 (5) The department shall promulgate rules to implement this section,
10 including rules doing all of the following:

11 (a) Setting specifications for the membership of the staff and the boards of
12 directors of registered organizations.

13 (b) Managing transfers to registered organizations of tetrahydrocannabinols
14 or drug paraphernalia seized by law enforcement agencies.

15 (c) Establishing record-keeping and reporting requirements for registered
16 organizations.

17 (d) Establishing registration requirements under sub. (4).

18 (e) Establishing procedures for the oversight of registered organizations and
19 for suspending or terminating the registration of registered organizations.

20 **SECTION 23.** 961.436 of the statutes is created to read:

21 **961.436 Medical use defense in cases involving**
22 **tetrahydrocannabinols.** (1) A member of a qualifying patient's treatment team
23 has a defense to prosecution under s. 961.41 (1) (h) or (1m) (h) for manufacturing, or
24 possessing with intent to manufacture, tetrahydrocannabinols if all of the following
25 apply:

BILL

1 (a) The manufacture or possession is a medical use of tetrahydrocannabinols
2 by the treatment team.

3 (b) The amount of tetrahydrocannabinols does not exceed an adequate supply.

4 (2) A member of a qualifying patient's treatment team has a defense to
5 prosecution under s. 961.41 (1) (h) or (1m) (h) for distributing or delivering, or
6 possessing with intent to distribute or deliver, tetrahydrocannabinols to another
7 member of the treatment team if all of the following apply:

8 (a) The distribution, delivery, or possession is a medical use of
9 tetrahydrocannabinols by the treatment team.

10 (b) The amount of tetrahydrocannabinols does not exceed an adequate supply.

11 (3) (a) Except as provided in par. (b), a member of a qualifying patient's
12 treatment team has a defense to a prosecution under s. 961.41 (3g) (e) if all of the
13 following apply:

14 1. The possession or attempted possession is a medical use of
15 tetrahydrocannabinols by the treatment team.

16 2. The amount of tetrahydrocannabinols does not exceed an adequate supply.

17 (b) A person may not assert the defense described in par. (a) if, while he or she
18 possesses or attempts to possess tetrahydrocannabinols, any of the following applies:

19 1. The person drives or operates a motor vehicle while under the influence of
20 tetrahydrocannabinols in violation of s. 346.64 (1) or a local ordinance in conformity
21 with s. 346.64 (1).

22 2. While under the influence of tetrahydrocannabinols, the person operates
23 heavy machinery or engages in any other conduct that endangers the health or
24 well-being of another person.

25 3. The person smokes marijuana in, on, or at any of the following places:

BILL**SECTION 23**

- a. A school bus or a public transit vehicle.
- b. The person's place of employment.
- c. Public or private school premises.
- d. A juvenile correctional facility.
- e. A jail or adult correctional facility.
- f. A public park, beach, or recreation center.
- g. A youth center.

4. The person is convicted under s. 961.41 (1) (h) or (1m) (h).

(4) For the purposes of a defense raised under sub. (1), (2), or (3) (a), a valid registry identification card is presumptive evidence that the person identified on the card as a qualifying patient is a qualifying patient and that if the person uses tetrahydrocannabinols he or she does so to alleviate the symptoms or effects of his or her debilitating medical condition or treatment.

(5) (a) In this subsection, "department" means the department of health and family services.

(b) Notwithstanding s. 227.12 (1), any person may petition the department to promulgate a rule to designate a medical condition or treatment as a debilitating medical condition or treatment. The department shall promulgate rules providing for public notice of and a public hearing regarding any such petition, with the public hearing providing persons an opportunity to comment upon the petition. After the hearing, but no later than 180 days after the submission of the petition, the department shall approve or deny the petition. The department's decision to approve or deny a petition is subject to judicial review under s. 227.52.

SECTION 24. 961.55 (8) of the statutes is amended to read:

BILL

1 961.55 (8) The failure, upon demand by any officer or employee designated in
2 s. 961.51 (1) or (2), of the person in occupancy or in control of land or premises upon
3 which the species of plants are growing or being stored, to produce an appropriate
4 federal registration, or proof that the person is the holder thereof, or a valid registry
5 identification card for the person constitutes authority for the seizure and forfeiture
6 of the plants.

7 **SECTION 25.** 961.555 (2) (a) of the statutes is amended to read:

8 961.555 (2) (a) ~~The Except as provided in par. (e), the~~ district attorney of the
9 county within which the property was seized shall commence the forfeiture action
10 within 30 days after the seizure of the property, ~~except that the defendant may~~
11 ~~request that the forfeiture proceedings be adjourned until after adjudication of any~~
12 ~~charge concerning a crime which was the basis for the seizure of the property. The~~
13 ~~request shall be granted.~~ The forfeiture action shall be commenced by filing a
14 summons, complaint and affidavit of the person who seized the property with the
15 clerk of circuit court, provided service of authenticated copies of those papers is made
16 in accordance with ch. 801 within 90 days after filing upon the person from whom
17 the property was seized and upon any person known to have a bona fide perfected
18 security interest in the property.

19 **SECTION 26.** 961.555 (2) (e) of the statutes is created to read:

20 961.555 (2) (e) The court shall adjourn forfeiture proceedings until after
21 adjudication of any charge concerning a crime that was the basis for the seizure of
22 the property if any of the following applies:

- 23 1. The defendant requests an adjournment.
- 24 2. The defendant invokes a defense to the crime under s. 961.436 or 961.5755.

25 **SECTION 27.** 961.555 (2m) of the statutes is created to read:

BILL

1 961.555 (2m) MEDICAL NECESSITY DEFENSE. (a) In an action to forfeit property
2 seized under s. 961.55, the person who was in possession of the property when it was
3 seized has a defense to the forfeiture of the property if any of the following applies:

4 1. The person was prosecuted under s. 961.41 (1) (h), (1m) (h), or (3g) (e),
5 961.573 (1), 961.574 (1), or 961.575 (1) in connection with the seized property but had
6 a valid defense under s. 961.436 (1), (2), or (3) (a) or 961.5755 (1) (a) or (2).

7 2. The person was not prosecuted under s. 961.41 (1) (h), (1m) (h), or (3g) (e),
8 961.573 (1), 961.574 (1), or 961.575 (1) in connection with the seized property, but,
9 if the person had been, he or she would have had a valid defense under s. 961.436 (1),
10 (2), or (3) (a) or 961.5755 (1) (a) or (2).

11 (b) The owner of property seized under s. 961.55 who is raising a defense under
12 par. (a) shall do so in the answer to the complaint that he or she serves under sub.
13 (2) (b). When a property owner raises such a defense in his or her answer, the state
14 must, as part of the burden of proof specified in sub. (3), prove that the facts
15 constituting the defense do not exist.

16 **SECTION 28.** 961.56 (1) of the statutes is amended to read:

17 961.56 (1) It Except as provided in s. 961.555 (2m) (b) and except for any
18 presumption arising under s. 961.436 (4) or 961.5755 (3), it is not necessary for the
19 state to negate any exemption or exception in this chapter in any complaint,
20 information, indictment or other pleading or in any trial, hearing or other proceeding
21 under this chapter. The, and the burden of proof of any exemption or exception is
22 upon the person claiming it.

23 **SECTION 29.** 961.5755 of the statutes is created to read:

24 **961.5755 Medical use of marijuana defense in drug paraphernalia**
25 **cases. (1) (a)** Except as provided in par. (b), a member of a treatment team has a

BILL

defense to prosecution under s. 961.573 (1) if he or she uses, or possesses with the primary intent to use, drug paraphernalia for the medical use of tetrahydrocannabinols by the treatment team.

(b) This subsection does not apply if while the person uses, or possesses with the primary intent to use, drug paraphernalia s. 961.436 (3) (b) 1., 2., 3., or 4. applies.

(2) A member of a treatment team has a defense to prosecution under s. 961.574 (1) or 961.575 (1) if he or she delivers, possesses with intent to deliver, or manufactures with intent to deliver to another member of his or her treatment team drug paraphernalia, knowing that it will be primarily used for the medical use of tetrahydrocannabinols by the treatment team.

(3) For the purposes of a defense raised under sub. (1) (a) or (2), a valid registry identification card is presumptive evidence that the person identified on the card as a qualifying patient is a qualifying patient and that, if the person uses tetrahydrocannabinols, he or she does so to alleviate the symptoms or effects of his or her debilitating medical condition or treatment.

SECTION 30. 968.073 of the statutes is created to read:

968.073 Medical use of marijuana; arrest and prosecution. (1)

DEFINITIONS. In this section:

- (a) “Adequate supply” has the meaning given in s. 961.01 (1g).
- (b) “Medical use of tetrahydrocannabinols” has the meaning given in s. 961.01 (14g).
- (c) “Primary caregiver” has the meaning given in s. 961.01 (19m).
- (d) “Qualifying patient” has the meaning given in s. 961.01 (20hm).
- (e) “Registry identification card” has the meaning given in s. 146.45 (1) (g).
- (f) “Treatment team” has the meaning given in s. 961.01 (20t).

BILL

1 (2) LIMITATIONS ON ARRESTS AND PROSECUTION; MEDICAL USE OF MARIJUANA. Unless
2 s. 961.436 (3) (b) 1., 2., 3., or 4. applies, a member of a qualifying patient's treatment
3 team may not be arrested or prosecuted for a violation of s. 961.41 (1) (h), (1m) (h),
4 or (3g) (e) if all of the following apply:

5 (a) The person manufactures, distributes, delivers, or possesses
6 tetrahydrocannabinols for their medical use by the treatment team.

7 (b) The person possesses a copy of the qualifying patient's or primary
8 caregiver's valid registry identification card.

9 (c) The quantity of tetrahydrocannabinols does not exceed an adequate supply.

10 (3) LIMITATIONS ON ARRESTS AND PROSECUTION; DRUG PARAPHERNALIA FOR MEDICAL
11 USE OF MARIJUANA. (a) Unless s. 961.436 (3) (b) 1., 2., 3., or 4. applies, a member of
12 a treatment team may not be arrested or prosecuted for a violation of s. 961.573 (1)
13 if all of the following apply:

14 1. The person uses, or possesses with the primary intent to use, drug
15 paraphernalia for the medical use of tetrahydrocannabinols by the treatment team.

16 2. The person possesses a copy of the qualifying patient's or primary caregiver's
17 valid registry identification card.

18 3. The person does not possess more than an adequate supply of
19 tetrahydrocannabinols.

20 (b) Unless s. 961.436 (3) (b) 1., 2., 3., or 4. applies, a member of a treatment team
21 may not be arrested or prosecuted for a violation of s. 961.574 (1) or 961.575 (1) if all
22 of the following apply:

23 1. The person delivers, possesses with intent to deliver, or manufactures with
24 intent to deliver to another member of his or her treatment team drug paraphernalia,

BILL

1 knowing that it will be primarily used for the medical use of tetrahydrocannabinols
2 by the treatment team.

3 2. The person possesses a copy of the qualifying patient's or primary caregiver's
4 valid registry identification card.

5 3. The person does not possess more than an adequate supply of
6 tetrahydrocannabinols.

7 (4) LIMITATIONS ON ARRESTS, PROSECUTION, AND OTHER SANCTIONS; PHYSICIANS. A
8 physician may not be arrested and a physician, hospital, or clinic may not be subject
9 to prosecution, denied any right or privilege, or penalized in any manner for making
10 or providing a written certification in good faith.

11 (5) PENALTY FOR FALSE STATEMENTS. Whoever intentionally provides false
12 information to a law enforcement officer in an attempt to avoid arrest or prosecution
13 under this section for a violation of s. 961.41 (1) (h), (1m) (h), or (3g) (e), 961.573 (1),
14 961.574 (1), or 961.575 (1) may be fined not more than \$500.

15 **SECTION 31.** 968.12 (5) of the statutes is created to read:

16 968.12 (5) MEDICAL USE OF MARIJUANA REGISTRY CARDS. An application for a
17 registry identification card under s. 146.45 (2), the issuance of such a card under s.
18 146.45 (4), or a person's possession of such a card shall not, by itself, constitute
19 probable cause under sub. (1) or otherwise subject the person or property of the
20 person who is applying for, issued, or possessing the card to inspection by any
21 governmental agency.

22 **SECTION 32.** 968.19 of the statutes is renumbered 968.19 (1) and amended to
23 read:

24 968.19 (1) ~~Property~~ Except as provided in sub. (2), property seized under a
25 search warrant or validly seized without a warrant shall be safely kept by the officer,

BILL

1 who may leave it in the custody of the sheriff and take a receipt therefor, so long as
2 necessary for the purpose of being produced as evidence on any trial.

3 **SECTION 33.** 968.19 (2) of the statutes is created to read:

4 968.19 (2) A law enforcement agency that has seized a live marijuana plant is
5 not responsible for the plant's care and maintenance.

6 **SECTION 34.** 968.20 (1) of the statutes is renumbered 968.20 (1f), and 968.20
7 (1f) (intro.), as renumbered, is amended to read:

8 968.20 (1f) (intro.) Any Except as provided in sub. (1j), any person claiming the
9 right to possession of property seized pursuant to a search warrant or seized without
10 a search warrant may apply for its return to the circuit court for the county in which
11 the property was seized or where the search warrant was returned. The court shall
12 order such notice as it deems adequate to be given the district attorney and all
13 persons who have or may have an interest in the property and shall hold a hearing
14 to hear all claims to its true ownership. If the right to possession is proved to the
15 court's satisfaction, it shall order the property, ~~other than contraband or property~~
16 ~~covered under sub. (1m) or (1r) or s. 173.12, 173.21 (4), or 968.205,~~ returned if:

17 **SECTION 35.** 968.20 (1d) of the statutes is created to read:

18 968.20 (1d) In this section:

19 (a) "Drug paraphernalia" has the meaning given in s. 961.571 (1) (a).

20 (b) "Tetrahydrocannabinols" means a substance included in s. 961.14 (4) (t).

21 **SECTION 36.** 968.20 (1j) of the statutes is created to read:

22 968.20 (1j) (a) Except as provided in par. (b), sub. (1f) does not apply to
23 contraband or property covered under sub. (1m) or (1r) or s. 173.12, 173.21 (4), or
24 968.205.

BILL

1 (b) Under sub. (1f), the court may return drug paraphernalia or
2 tetrahydrocannabinols that have been seized to the person from whom they were
3 seized if any of the following applies:

4 1. The person was prosecuted under s. 961.41 (1) (h), (1m) (h), or (3g) (e),
5 961.573 (1), 961.574 (1), or 961.575 (1) in connection with the seized property but had
6 a valid defense under s. 961.436 (1), (2), or (3) (a) or 961.5755 (1) (a) or (2).

7 2. The person was not prosecuted under s. 961.41 (1) (h), (1m) (h), or (3g) (e),
8 961.573 (1), 961.574 (1), or 961.575 (1) in connection with the seized property, but,
9 if the person had been, he or she would have had a valid defense under s. 961.436 (1),
10 (2), or (3) (a) or 961.5755 (1) (a) or (2).

11 **SECTION 37.** 968.20 (3) (a) of the statutes is amended to read:

12 968.20 (3) (a) First class cities shall dispose of dangerous weapons or
13 ammunition seized 12 months after taking possession of them if the owner,
14 authorized under sub. (1m), has not requested their return and if the dangerous
15 weapon or ammunition is not required for evidence or use in further investigation
16 and has not been disposed of pursuant to a court order at the completion of a criminal
17 action or proceeding. Disposition procedures shall be established by ordinance or
18 resolution and may include provisions authorizing an attempt to return to the
19 rightful owner any dangerous weapons or ammunition which appear to be stolen or
20 are reported stolen. If enacted, any such provision shall include a presumption that
21 if the dangerous weapons or ammunition appear to be or are reported stolen an
22 attempt will be made to return the dangerous weapons or ammunition to the
23 authorized rightful owner. If the return of a seized dangerous weapon other than a
24 firearm is not requested by its rightful owner under sub. ~~(1)~~ (1f) and is not returned
25 by the officer under sub. (2), the city shall safely dispose of the dangerous weapon or,

BILL

1 if the dangerous weapon is a motor vehicle, as defined in s. 340.01 (35), sell the motor
2 vehicle following the procedure under s. 973.075 (4) or authorize a law enforcement
3 agency to retain and use the motor vehicle. If the return of a seized firearm or
4 ammunition is not requested by its authorized rightful owner under sub. (1) (1f) and
5 is not returned by the officer under sub. (2), the seized firearm or ammunition shall
6 be shipped to and become property of the state crime laboratories. A person
7 designated by the department of justice may destroy any material for which the
8 laboratory has no use or arrange for the exchange of material with other public
9 agencies. In lieu of destruction, shoulder weapons for which the laboratories have
10 no use shall be turned over to the department of natural resources for sale and
11 distribution of proceeds under s. 29.934.

12 **SECTION 38.** 968.20 (3) (b) of the statutes is amended to read:

13 968.20 (3) (b) Except as provided in par. (a) or sub. (1m) or (4), a city, village,
14 town or county or other custodian of a seized dangerous weapon or ammunition, if
15 the dangerous weapon or ammunition is not required for evidence or use in further
16 investigation and has not been disposed of pursuant to a court order at the
17 completion of a criminal action or proceeding, shall make reasonable efforts to notify
18 all persons who have or may have an authorized rightful interest in the dangerous
19 weapon or ammunition of the application requirements under sub. (1) (1f). If, within
20 30 days after the notice, an application under sub. (1) (1f) is not made and the seized
21 dangerous weapon or ammunition is not returned by the officer under sub. (2), the
22 city, village, town or county or other custodian may retain the dangerous weapon or
23 ammunition and authorize its use by a law enforcement agency, except that a
24 dangerous weapon used in the commission of a homicide or a handgun, as defined
25 in s. 175.35 (1) (b), may not be retained. If a dangerous weapon other than a firearm

BILL

1 is not so retained, the city, village, town or county or other custodian shall safely
2 dispose of the dangerous weapon or, if the dangerous weapon is a motor vehicle, as
3 defined in s. 340.01 (35), sell the motor vehicle following the procedure under s.
4 973.075 (4). If a firearm or ammunition is not so retained, the city, village, town or
5 county or other custodian shall ship it to the state crime laboratories and it is then
6 the property of the laboratories. A person designated by the department of justice
7 may destroy any material for which the laboratories have no use or arrange for the
8 exchange of material with other public agencies. In lieu of destruction, shoulder
9 weapons for which the laboratory has no use shall be turned over to the department
10 of natural resources for sale and distribution of proceeds under s. 29.934.

SECTION 39. Effective date.

12 (1) This act takes effect on July 1, 2005.

13 (END)

Northrop, Lori

From: Hough, Michelle
Sent: Thursday, February 19, 2004 2:08 PM
To: LRB.Legal
Subject: Draft review: LRB 03-3720/2 Topic: Medical use of marijuana

It has been requested by <Hough, Michelle> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB 03-3720/2 Topic: Medical use of marijuana